



Administrative Rules

JULY 2015

Texas Alcoholic Beverage Commission
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TEXAS ALCOHOLIC BEVERAGE COMMISSION

ADMINISTRATIVE RULES

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CHAPTER 31. ADMINISTRATION

ADMINISTRATIVE FUNCTIONS OF THE COMMISSION

§31.1 Separation of Duties Between Commission and Administrator.

(a) This rule implements §5.12 of the Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt rules to clearly separate the policy-making authority of the commissioners from the management responsibilities of the administrator, and §5.34(b) of the Code, which requires the commission to develop and implement policies that clearly define the respective responsibilities of the commission and staff.

(b) The commission retains the duty and authority to:

(1) Establish agency policies and goals to carry out the duties and authority granted to the commission under the Code;

(2) Provide leadership and direction to ensure agency laws, rules, policies and goals are implemented in a responsible, effective and cost efficient manner;

(3) Ensure accountability and transparency within the agency and to the Governor, the Legislature, the public, and persons regulated;

(4) Appoint and remove the administrator;

(5) Adopt agency rules to implement statutory duties and agency policies;

(6) Employ or appoint and terminate or remove an internal auditor, adopt an audit plan, approve audit findings and ensure agency compliance with audit requirements;

(7) Exercise any authority and carry out any duty of the commission not delegated to the administrator; and

(8) Employ and terminate the general counsel, who shall report directly to the commission.

(c) The commission delegates the following duties and authority to the administrator:

(1) Plan and implement an effective an efficient operational and organizational structure;

(2) Act as the agency liaison and resource to the executive and legislative branch;

(3) Prepare and submit the agency budget and appropriations requests;

(4) Employ or appoint an executive management team with the skills, knowledge and commitment necessary to achieve the goals and implement the policies adopted by the commission;

(5) Assign and delegate to each member of the executive management team and the general counsel the responsibility and authority necessary to effectively administer all agency operations, duties and functions, implement policy, and manage staff and resources, including the authority to further delegate and assign the essential duties and responsibilities of the agency to ensure the highest and best use of agency staff and resources;

(6) Develop, monitor and report measures or expectations for the administrative, regulatory and enforcement functions of the agency to ensure that the agency goals are accomplished and policies followed;

- (7) Develop and implement comprehensive and agency-wide internal policies and procedures necessary to carry out each essential function, duty, policy or goal of the agency;
- (8) Ensure that all agency staff has access to, knowledge of and responsibility for consistently following policies adopted by the commission and agency-wide internal policies and procedures;
- (9) Administer the oath of office or commission to agency staff and agents;
- (10) Render, or delegate to agency staff, the agency decision or order in any matter over which the agency has final decision-making authority.

Note: Amended Rule Adopted: October 22, 2012; Effective: November 15, 2012

§31.2 State-owned Motor Vehicles.

- (a) Exemption from inscription requirements for state-owned vehicles.
 - (1) This subsection implements §721.003, Transportation Code, relating to exemption from inscription requirement for certain state-owned vehicles, which requires the commission to adopt a rule to be exempt from the inscription requirements of Chapter 721.
 - (2) The primary use of the state-owned vehicles for which an exemption is sought is the transportation of commission employees engaged in the prevention, detection, investigation and enforcement of criminal and regulatory violations of the Alcoholic Beverage Code.
 - (3) Not printing inscriptions on commission vehicles will: increase effectiveness of enforcement and compliance operations and activities; increase the safety of commission employees engaged in enforcement and compliance operations and activities; and, decrease the risk of damage to state-owned vehicles and property.
- (b) Assignment of Vehicles.
 - (1) This subsection implements §2171.1045, Government Code, relating to the restrictions on assignment of state vehicles.
 - (2) Vehicles are assigned to commission executive staff whose essential agency duties and functions require them to have vehicles available on a regular or frequent basis to provide state-wide oversight, management and supervision of agency staff.
 - (3) Pool vehicles are maintained at headquarters to reduce the cost to the state for travel required by qualified agency staff whose essential duties and functions require regular or periodic travel by vehicle.
 - (4) Vehicles are assigned to field operation employees whose essential agency duties and functions require daily and extensive use of vehicles and the cost to the state of providing a state-owned vehicle is less than the cost of reimbursing employees for the use of personal vehicles.

Note: New Rule Adopted: July 28, 2009; Effective Date: August 30, 2009
Readopted Without Changes and Effective: March 24, 2015

§31.3 Petition for the Adoption of a Rule.

- (a) Purpose. This section provides procedures for any interested person (petitioner) to request the Alcoholic Beverage Commission (commission) to adopt a rule.
- (b) Content of Petition.
 - (1) The petition must be in writing. No form is required but all information must be provided, or a reason why required information cannot be provided given.

- (2) The petition must contain the following:
- (A) petitioner's name, address, organization or affiliation, if any, and the name of the person or entity on whose behalf the petition is filed, if different from the person submitting the petition;
 - (B) a plain and brief statement about why a rule or change in an existing rule is needed, required, or desirable, including the public good to be served and any effect on those who would be required to comply with the rule;
 - (C) an estimate of the fiscal impact on state and local government as a result of enforcing or administering the proposed rule, an estimate of the economic impact on persons required to comply with the proposed rule, whether there may be an effect on local employment, and the facts, assumptions and methodology used to prepare estimates and impacts required by this subparagraph;
 - (D) a statement on the commission's authority to adopt the proposed rule;
 - (E) the proposed text of a new rule, or proposed changes to an existing rule;
- and
- (F) a list of individuals, organizations or affiliations that may be interested or affected by the proposed rule, if known.
- (c) Submission. A petition is submitted on the date it is received by the Administrator. The petition must be addressed to the Administrator, Texas Alcoholic Beverage Commission, and mailed to P.O. Box 13127, Austin, Texas 78711-3127, or hand delivered to the Administrator at commission headquarters in Austin, Texas.
- (d) Review. The Administrator will review the petition for compliance with the requirements of this section. If all requirements of this section are met, the Administrator will bring the petition to the commission, except as provided otherwise in this section.
- (e) Decision to Deny or Accept. The commission will deny a petition for rulemaking, or accept, in whole or in part, a petition for rulemaking within 60 days from the date the petition is submitted. If the commission neither denies nor accepts the petition within 60 days from the date it is submitted, agency staff will initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. In such case, agency staff may redraft the proposed text to conform to style and format requirements for the agency's rules.
- (1) The Administrator will notify the petitioner in writing if the petition is denied and state the reason or reasons for the denial.
- (2) The commission will refer an accepted petition to agency staff to initiate the rulemaking process under Chapter 2001, Subchapter B, of the Government Code. Agency staff may redraft the proposed text to conform to style, format and policy decisions of the agency.
- (f) Repetitive petitions. The Administrator may refuse to bring a petition for rulemaking to the commission if, within the preceding year, the commission has considered a previously submitted petition for the same rule.

Note: New Rule Adopted: July 28, 2009; Effective Date: August 30, 2009

Note: Amended Rule Adopted: May 28, 2015; Effective Date: June 17, 2015

§31.4 Public Information Signs.

- (a) Any licensed business location in the state which sells or serves alcoholic beverages to the ultimate consumer shall display at his place of business in a prominent place easily seen by

the public, i.e. near the door or by the cash register, a sign that provides the following information: "If you have a complaint about the sale or service of alcoholic beverages in this establishment, please contact the Texas Alcoholic Beverage Commission, P. O. Box 13127, Austin, Texas 78711-3127, or phone (512) 206-3333."

(1) This sign shall be no smaller than 6 inches by 3-1/2 inches and shall be in lettering or type of a size sufficient to render it both conspicuous and readily legible.

(2) The sign shall be made of sturdy material; if made of paper, the weight shall be no less than 65# stock.

(b) Health Risk Warning Sign. A holder of a license or permit authorizing the sale of alcoholic beverages for on premises consumption shall display a health risks warning sign. The health risks warning sign must:

- (1) be posted at each egress of all public restrooms on the licensed premises;
- (2) be placed at a level where the sign can be easily seen by persons exiting the restroom;
- (3) be not less than 8 ½ x 11 inches in size;
- (4) the following language shall be printed in English and in Spanish, in bold black type on a white surface, or other clearly legible graphic design, with a font or type set size of not less than 28 point Arial or Helvetica:

HEALTH RISK WARNING SIGN

- Drinking any type of alcohol while pregnant can hurt your baby's brain, heart, kidneys, and other organs and can cause birth defects.
- The safest choice is not to drink at all when you are pregnant or trying to become pregnant.
- If you might be pregnant, think before you drink.

AVISO SOBRE RIESGOS DE SALUD

- Beber cualquier tipo de alcohol cuando está embarazada puede hacerles daño al cerebro, al corazón, a los riñones y a otros órganos de su bebé y puede causar defectos de nacimiento.
- Lo más seguro es no beber nada de alcohol cuando está intentando quedar embarazada o ya lo está.
- Si es posible que esté embarazada, piénselo antes de beber.

(c) The responsibility of furnishing the required signs in this section is the sole responsibility of the licensee or permittee.

Note: Amendment Adopted: January 25, 2008; Effective: February 19, 2008.

§31.5 Public Information Act Requests.

(a) Charges made for providing copies of public information by the Texas Alcoholic Beverage Commission shall be assessed in accordance with the schedule of charges maintained by the Office of the Attorney General and found at 1 TAC §§70.1 – 70.12.

(b) The General Counsel or the General Counsel's designee shall be the agency's open records coordinator. The open records coordinator is subject to the direction of the Administrator, who is the officer for public information of the agency pursuant to Texas Government Code §552.201.

Note: Amended Rule Adopted: July 23, 2013; Effective Date: August 25, 2013

§31.10 Filing a Complaint.

(a) This section relates to §5.53 of the Texas Alcoholic Beverage Code (Code), which requires the Texas Alcoholic Beverage Commission (commission) to adopt a rule to define the agency's complaint process from the time a complaint is received until the complaint is resolved.

(b) The public, consumers, commission and persons and entities regulated by the commission may file a complaint against an individual or entity holding a license, permit or certificate issued by the commission.

(1) A complaint may be submitted anonymously. If the complainant wishes to be informed of the resolution of the complaint, the complainant must provide contact information.

(2) A complaint may be submitted: in writing to the Texas Alcoholic Beverage Commission (TABC), P.O. Box 13127, Austin, Texas 78711-3127; in person at any TABC office; by phone at (512) 206-3333 or the phone number of the nearest TABC office, or by electronic mail at complaints@tabc.texas.gov.

(c) A written complaint form, instructions on how and where to file a complaint, and a list of local TABC offices may be found on the commission's public website at www.tabc.texas.gov. A complainant can also request that a form and instructions be mailed to a complainant by calling the commission at (512) 206-3333, or a local TABC office. A complainant may also file a complaint on plain paper without using the form by providing the following information:

(1) Complainant name and how the complainant may be contacted if they wish to be notified of the outcome or resolution of the complaint.

(2) The name or identity of the individual or entity being complained about and how the commission may find or contact the individual or locate the entity. This may include physical, mailing and e-mail address, phone numbers and persons the complainant has contacted or spoken with regarding the complaint.

(3) A brief statement of the nature of the complaint and relevant facts, including the names of persons with knowledge, times, dates, and location.

(4) If the complainant has documents or records related to the complaint, a copy of these should be attached to the complaint. Do not send original records with a complaint.

Note: New Rule Adopted: September 26, 2008; Effective Date: October 28, 2008
Readopted Without Changes and Effective: March 24, 2015

§31.11 Resolution and Information on Complaints.

(a) The commission investigates all complaints. The time and resources allocated to an investigation will be based on facts stated in the complaint. Complaints alleging conduct that presents a serious risk to the public health and safety will be given priority.

(b) If an investigation results in a finding that a provision of the Texas Alcoholic Beverage Code (Code) or commission rules have been or may have been violated, the commission may proceed with an action to cancel, suspend, or refuse to issue a permit or license under Chapters 11 and 61 of the Code, and the complainant will be informed if contact information is provided and if the complainant requests to be informed.

(c) If an investigation results in a finding that no violation of the Code or commission rules has occurred, the complainant will be informed of this result if contact information has been provided.

(d) General information and the nature and disposition of complaints can be accessed on the Texas Alcoholic Beverage Commission (TABC) public website at www.tabc.texas.gov.

(e) The public can access the violation history of a license or permit issued by the commission on the TABC public website at www.tabc.texas.gov.

(f) Information about a specific complaint against an individual or entity holding a license, permit or certificate issued by the commission may be obtained by filing a request under the Texas Public Information Act (TPIA). Some information in a complaint or investigation of a complaint may not be subject to disclosure under the TPIA.

Note: New Rule Adopted: September 26, 2008; Effective Date: October 28, 2008

Note: Amended Rule Adopted: May 28, 2015; Effective Date: June 17, 2015

§31.12 Training and Education of Commission Employees.

(a) The commission may use state funds in accordance with Government Code §§656.041 - 656.104 to provide training and education for its employees.

(b) Training or education provided pursuant to subsection (a) of this section shall be related to the employee's current position or prospective job duties within the commission.

(c) Commission employees may be required to complete training and/or education programs related to the employee's current or prospective job duties as a condition of employment.

(d) Participation in training or education programs requires the approval of the employee's supervisors prior to participation and is subject to the availability of funds in the commission's budget.

(e) The employee training and education program for the commission may include:

- (1) mandatory agency-sponsored training or education required for all employees;
- (2) training or education relating to technical or professional certifications and licenses;
- (3) training and education designed to promote employee development;
- (4) employee-funded external education;
- (5) commission-funded external education;
- (6) a tuition-reimbursement program; and
- (7) such other training or education determined by the commission to be of benefit to the employee and the commission, and to promote effective state administration pursuant to Government Code §656.042.

(f) Approval to participate in any portion of the commission's training and education program shall not in any way: affect an employee's at-will employment status; constitute a guarantee or indication of continued employment; or constitute a guarantee or indication of future employment in a current or prospective position.

(g) Approval to participate in any training or education program may be withdrawn if the commission determines, in its sole discretion, that participation would negatively affect the employee's job duties or performance.

Note: New Rule Adopted: January 24, 2013; Effective: February 18, 2013

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

§33.1 Deferred Adjudication.

(a) This section relates to Alcoholic Beverage Code §§11.46, 25.06, 61.42, 61.43, 69.06, and 109.532.

(b) In determining whether an applicant is not qualified or is unsuitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1), or whether an application should be cancelled or denied the commission may consider whether the person is currently serving deferred adjudication for:

- (1) any felony offense;
- (2) any controlled substance offense in the Health and Safety Code Chapter 481;
- (3) any firearm or deadly weapon offense in Penal Code Chapter 46;
- (4) any prostitution offense in Penal Code Chapter 43;
- (5) any gambling offense in Penal Code Chapter 47;
- (6) any human trafficking offense in Penal Code Chapter 20A;
- (7) any fraud offense in Penal Code Chapters 32 or 35;
- (8) any money laundering offense in Penal Code Chapter 34; or
- (9) any violation of the Alcoholic Beverage Code.

(c) An applicant currently serving deferred adjudication for one of the offenses listed in subsection (b) of this section shall provide information requested by the commission to allow the commission to determine whether the applicant is qualified or suitable to hold a license or permit. In determining whether an applicant is qualified or suitable to hold a license or permit, the commission shall consider the relationship between the offense and the particular license or permit being sought, taking into account these factors:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person at the time of the crime;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person prior to and following the criminal activity;
- (5) evidence of the person's rehabilitation; and
- (6) other evidence presented by the person of the person's present suitability, including letters of recommendation.

(d) If an applicant has completed the conditions of a deferred adjudication prior to filing an application, the commission will not consider the offense for which the deferred adjudication was served in deciding whether the applicant is qualified or suitable to hold a permit or license under Alcoholic Beverage Code §109.532(b)(1).

Note: Amended Rule Adopted: July 26, 2011; Effective Date: August 21, 2011

§33.2 Application and Fee Payment Procedures.

(a) Applications for licenses, permits and certificates shall be made by an applicant in such a manner as may be directed by the administrator upon forms provided by the commission.

(b) Each application shall include all information required by the administrator to insure compliance with all applicable statutes and rules and regulations of the agency.

(c) Each applicant for a license, permit or certificate issued by the commission, shall submit with the application the payment of all state fees and surcharges in accordance with the applicable provisions of the code and rules.

Note: Amended Rule Adopted: May 28, 2015; Effective Date: June 17, 2015

§33.3 Brewpub License Fees.

Note: Repeal Adopted: November 19, 2013; Effective Date: December 12, 2013

§33.4 Manufacturer's Warehouse License Fee.

(a) Each applicant for an original or renewal licensed warehouse under the Alcoholic Beverage Code, §62.13, known as a manufacturer's warehouse license, shall submit with the application payment of all state fees and surcharges in accordance with Alcoholic Beverage Code, §§61.35 and 61.48.

(b) The annual state license fee for each manufacturer's warehouse license shall be \$300.

Note: Amended Rule Adopted: May 28, 2015; Effective Date: June 18, 2015

§33.5 Food and Beverage Certificate.

(a) Each applicant for an original or renewal food and beverage certificate shall include all information required by the commission to insure compliance with all applicable statutes and rules and regulations of the agency.

(b) Application for the certificate shall be upon forms provided by the agency.

(c) The annual certificate fee for each location is \$100 and must be submitted in the form of a cashier's check or U.S. postal money order payable to the Texas Alcoholic Beverage Commission. The original certificate will expire upon expiration of the primary permit or license. No prorated certificate fees will be given and no refunds made for issuance of the food and beverage certificate for less than one year.

(d) The following words and terms, when used in this chapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) Food service - cooking or assembling food on premise primarily for on-premise consumption. Commercially pre-packaged items which require no cooking or assembly and which may be purchased off-premise do not constitute food service under this section;

(2) Entree - main dish of a meal;

(3) Multiple entrees - no fewer than eight different entrees per meal period must be available to customers; and

(4) Food service facilities - a portion of the licensed premises where food is stored and prepared primarily for on-premise consumption.

(e) An applicant is not qualified for a food and beverage certificate unless the following conditions, in addition to other requirements, are satisfied:

(1) with respect to retail dealer's on-premise licenses and wine and beer retailer's permits, the applicant's primary business on the premises is food service and with respect to mixed beverage permits and private club registration permits, the applicant maintains food service on the premise;

(2) multiple entrees are available to customers;

(3) food service facilities are maintained on the premises;

(4) the hours of operation for sale and service of food and alcoholic beverages are the same except that food may be sold or served before or after the legal hours for sale of alcoholic beverages; and

(5) subject to the approval of the commission, an applicant may present evidence to the commission which demonstrates substantial compliance with subsection (e)(2) and (e)(4) and that full compliance is limited by the nature of the business operation. Approval by the commission may be granted when the commission is satisfied that the operation is a food service establishment.

(f) If the applicant is a hotel that maintains separate area restaurants, lounges or bars, food service facilities must exist for each of the licensed premises.

(g) An applicant for an originally issued food and beverage certificate shall submit a sworn statement attesting that food service is maintained on the premises and for holders of wine and beer retailer's permits and retail dealer's on-premise licenses, food service is the primary business on the premises. The applicant shall furnish the following, as well as any other information as may be deemed reasonably necessary by the commission:

(1) the menu or, if no menu is available, a listing of the food and beverage items;

(2) hours of operation of food service and hours of operation for sale or service of alcoholic beverages;

(3) sales data or, if not available, projection of sales. The projection or data should include sufficient breakdown of revenues of food, alcoholic beverages and other major categories at the location;

(4) listing of equipment used in preparation and service of food versus the equipment used in preparation and service of alcoholic beverages; and

(5) copies of floor plans of the licensed premises indicating areas devoted primarily to the preparation and service of food and those devoted primarily to the preparation and service of alcoholic beverages.

(h) Applicants for renewal of food and beverage certificates whose primary permits are a wine and beer retailer's permit or a retail dealer's on-premise license shall submit sales information and other information or documents required by the commission to indicate the

business at the licensed location is a food service establishment with food service facilities for the preparation and service of multiple entrees.

(i) The commission may review the operation at the licensed premises to determine the applicant or holder of the food and beverage certificate has or is maintaining food service with food service facilities for the preparation and service of multiple entrees. In doing so the commission may review such items as required in the original or renewal application and advertising, promotional items, changes in operations or hours, changes in floor plans, prominence of food items on menu as compared to alcoholic beverages, name of business, number of transactions with food components, copies of city or county permits or certificates relating to type of business operation and any other item deemed necessary or applicable.

(j) Failure to submit documentation requested or accurately maintain required records is prima facie evidence of non-compliance.

(k) The certificate shall be posted in a conspicuous place adjacent to the primary permit or license at all times on the licensed premises.

(l) In verifying that the certificate holder is maintaining food service as the primary business on the premises, the commission may examine all books, papers, records, documents, supplies and equipment of the certificate holder.

(m) Recordkeeping requirements for holders of wine and beer retailer's permits, including railway cars and excursion boats, and retail dealer's on-premise licenses:

(1) each holder of a food and beverage certificate whose primary permit or license is a wine and beer retailer's permit, including those issued for railway cars and excursion boats, or a retail dealer's on-premise license shall maintain records to reflect separate totals for alcoholic beverage sales, food sales and other major sales categories at the location. Purchase invoices must be maintained to reflect the total purchases of alcoholic beverages, food and other major purchase categories;

(2) complimentary alcoholic beverages shall be recorded and included in the total alcoholic beverage sales as if it was a normal sale and clearly marked as being complimentary;

(3) all records are required to be maintained for four years and made available to authorized representatives of the commission upon reasonable request; and

(4) in examining the alcoholic beverage sales, the commission may compute and determine the percentage of alcoholic beverage sales upon the basis of information filed with the commission or held by the certificate holder, but if such information is insufficient, the computation and determination of the percentage of sales may be based upon any records or information which is available.

(n) In considering alcoholic beverage sales for holders of mixed beverage permits, private club registration permits, private club exemption certificate permits and private club beer and wine permits, the dollar value of complimentary drinks shall be added to total sales of alcoholic beverages in determining the percentage of alcoholic beverage sales on the licensed premises.

§33.6 Renewal of Licenses and Permits After Expiration.

(a) This rule relates to §6.04 of the Alcoholic Beverage Code.

(b) In addition to the requirements of Alcoholic Beverage Code §61.48 and §5.50, each applicant who files a license or permit renewal under Alcoholic Beverage Code, §§ 6.04 and 61.48, must, prior to the close of business of the thirtieth calendar day after expiration, submit a fee of \$100.

(c) In addition to the requirements of Alcoholic Beverage Code §§11.32, 11.35, and 5.50, and any pertinent rule or procedure of the commission, license and permit renewals which are filed under the Alcoholic Beverage Code, §6.04, must also meet the following requirements:

(1) mixed beverage permits, private club registration permits, private club exemption certificate permits, subordinate permits and any license or permit renewal required to be presented to any of this agency's offices which are filed after expiration must be presented prior to close of business on the thirtieth calendar day after expiration and must be complete in form, accompanied by all state fees and surcharges as well as the \$100 fee required by Alcoholic Beverage Code §6.04.

(2) license and permit renewals which are required to be submitted directly to the licensing division in Austin must be postmarked no later than thirty calendar days after expiration or received by the commission no later than thirty calendar days after expiration. The application must be complete in form and accompanied by all state fees, surcharges, and late fees.

(d) Failure to submit any requested information, corrections or forms within fourteen days of demand will constitute non-compliance with Alcoholic Beverage Code §6.04, and this rule, resulting in the expiration of the license or permit due to the insufficiency of the application.

Note: Amendment Adopted: October 27, 2003; Effective Date: December 14, 2003

Note: Amended Rule Adopted: September 24, 2013; Effective Date: October 24, 2013

§33.7 Warning Sign Requirements.

(a) This rule is adopted pursuant to §104.06 of the Alcoholic Beverage Code.

(b) Each applicant for an original or renewal of a beer and wine retailer's permit, mixed beverage permit, private club registration permit, or retail dealer's on-premise license shall furnish sales data or, if not available, projection of sales for the location at which the license or permit is located or will be located. The projection or sales data should include a sufficient breakdown of sales into the categories of food, alcoholic beverages, and other major categories of sales at the location.

(c) Holders of a food and beverage certificate are not subject to the provisions of this section, however, the holders of wine and beer retailer's permits and retail dealer's on-premise licenses are subject to record keeping provisions set forth in §33.5.

§33.9 Fees for On-Line Transaction.

(a) This rule relates to §5.55 of the Alcoholic Beverage Code.

(b) A service fee of \$0.25 shall be assessed for each on-line transaction.

(c) An additional fee of 2.75% of the total transaction amount shall be assessed for transactions paid by credit card.

(d) An additional fee of 0.5% of the total transaction amount shall be assessed for transactions paid by ACH or electronic check.

Note: New Rule Adopted: August 22, 2005; Effective Date: September 12, 2005

Note: Amended Rule Adopted: September 24, 2013; Effective Date: October 24, 2013

§33.10. Citizenship and Status.

(a) An individual who applies for a license or permit shall, at the time of filing the application, be a United States citizen or legally authorized to work in the United States. The commission will not issue a permit or license to a person that will cause the person to be in violation of the person's immigration status and/or result in them being illegally in the United States.

(b) No permit shall be issued to a corporation, partnership, firm, association, or other legal entity, other than an individual, unless the entity is formed by filing a certificate of formation or registered to transact business in this state. This requirement does not apply to:

- (1) An entity holding a brewer's permit, and other licenses and permits as are necessary to the operation of the brewer's permit,
- (2) A holder of an agent's, industrial or carrier's permit, or
- (3) A foreign corporation that was engaged in the legal alcoholic beverages business in this State under charter or permit prior to August 24, 1935.

Note: New Rule Adopted: April 30, 2008; Effective Date: May 20, 2008

§33.11 Application and Issuance.

(a) This rule relates to Chapter 27, Subchapter A of the Alcoholic Beverage Code.

(b) The following procedure is hereby established in the processing and issuing of temporary licenses and temporary wine and beer retail permits. Temporary licenses and permits shall be issued by a commission representative upon application by the holder of a primary license or permit authorizing issuance of same. Said application shall be made in duplicate upon forms furnished by the commission and shall be signed and sworn to by the applicant. The application shall be accompanied by a cashier's check or a U.S. postal money order payable to the Texas Alcoholic Beverage Commission in the appropriate amount. The application shall be filed in the field office designated for the county where the temporary event is to be held.

(c) Upon approval of the application, the license or permit shall be issued on pre-numbered forms in triplicate. The original of the license shall be delivered to the applicant and must be displayed at all times in a conspicuous place on the licensed premises. The first copy of the license or permit shall be attached to the copy of the application and forwarded to the main office of the commission accompanied by the cashier's check or U.S. postal money order. The third copy shall remain in the book of pre-numbered forms and kept on file in the field office in which it is issued.

(d) Ten days following the temporary event, the temporary license/permit holder that sells wine, beer, and malt liquor under the temporary license/permit in a county other than the county in which the basic license/permit is located, shall file with the same office the amount of alcoholic beverages purchased and sold. Such list shall also indicate the serial number shown on the face of the temporary license/permit and date of the event. This list shall be kept on file by the field office.

(e) Any product being transported shall be accompanied by invoices. Remaining product must be returned to the primary licensed location.

Note: Amendment Adopted: October 27, 2003; Effective Date: December 14, 2003

§33.12 Use of Caterer's Permits.

(a) Authority and Applicability. This rule is promulgated under the authority of Alcoholic Beverage Code, §31.03(b) and, in the absence of specific statutory authority to the contrary, regulates the activities of holders of mixed beverage permits who also hold caterer's permits issued in conformity with Chapter 31 of the code.

(b) Designated Areas. Except as provided for in subsection (e) of this section, the holder of a caterer's permit, or his designated representative, shall complete a form, provided by the commission, prior to the use of the permit. The forms shall include the following information:

- (1) the caterer's permit number;
- (2) the trade name of the mixed beverage permit associated with the caterer's permit;
- (3) the location of the function(s) to be catered;
- (4) the date(s) and time(s) of the function(s) to be catered; and
- (5) a brief description of the function to be catered.

The form shall be signed by a representative of the commission and copy(s) shall be left with the commission at either a district office, an outpost office, or with a local agent or employee authorized to issue such forms. The original of the form shall be placed in a conspicuous place at the location of the catered function during the time that the function is being catered.

(c) Use in Connection with Pending Applications. Only under the following circumstances may the holder of a caterer's permit utilize that authority to provide service of alcoholic beverages at a location which has been designated as the licensed premises in a pending application for a permit or license allowing the sale of alcoholic beverages for on-premise consumption.

(1) There has been no protest filed by the commission, any local authorities or groups of citizens against the granting of the pending application.

(2) The commission's district office must have determined that the license or permit application for the proposed location has been completed and that all fees and securities, if applicable, have been paid, and the district office clearance report must have been finalized and sent to the licensing division at the state headquarters.

(3) The caterer's permit may be used for no more than ten (10) days, counting the day of the first catered event, unless the administrator or his designated representative, on the basis of a case-by-case review of the specific situation, grants an extension of time.

(4) Regardless of the number of days on which the caterer's permit has been used, the right to use that permit terminates when the commission either issues an order denying the previously pending application or issues to the applicant the license or permit for which application had been made.

(d) Suspension. No holder of a caterer's permit shall utilize that authority to provide service of alcoholic beverages on the licensed premises of any person or entity whose permit or license for that location has been suspended by commission administrative action.

(e) Repetitive Catering. Holders of a caterer's permit who have frequent, repetitive catering at a specific location or on a designated route may apply for repetitive catering certificates. An application for repetitive catering certificates shall be made on forms prescribed by the commission. Upon approval of the commission, a permit holder will be issued sequentially numbered certificates. Certificates will not be issued if barred under subsections (c) and (d) of this section. To use a caterer's permit, the holder must complete a sequentially numbered certificate for each event held. The repetitive catering certificate must be completed prior to the

function and be placed in a conspicuous place at the location of the function at all times during the function. At any time the administrator or designated representative may compel a permit holder to return all certificates for a location to the commission.

(f) Repetitive Catering Certificate. The repetitive catering certificates must specify the location or route for which the certificates are issued, the permit number under which they are issued and the trade name of the mixed beverage permit associated with the caterer's permit. The holder of a caterer's permit shall complete the following information on the certificate prior to the event:

- (1) the date and time of the function;
- (2) the location of the function; and
- (3) a description of the event.

(g) Reporting. Holders of repetitive catering certificates shall deliver or mail copies of the repetitive catering certificates to the commission at the district office in which a catered event occurs within seven (7) days of the conclusion of the event which is catered.

(h) Ground for Denial. The administrator or his designated representative shall refuse to issue a catering certificate or repetitive catering certificates to anyone if there is reason to believe the issuance of a certificate is detrimental to the public.

§33.13 Process to Apply for License or Permit.

(a) This section relates to any license or permit. The purpose of this section is to clarify the pre-qualification process in subsection (b) of this section and distinguish it from the application process described in subsections (c) and (d) of this section.

(b) Before an application for a license or permit that is required to be certified under §11.37 or §61.37 of the Alcoholic Beverage Code may be filed with the commission, a pre-qualification packet must be completed. A pre-qualification packet is deemed incomplete if it does not contain all required certifications applicable to the type of license or permit sought and for the location requested, and a response to each item requested by the commission in the packet. For purposes of this section, a completed pre-qualification packet is one that contains:

(1) all required certifications signed by the city secretary, where appropriate, and the county clerk that the location for which the license or permit is sought is in a "wet" area for such license or permit and is not prohibited by charter, by ordinance, or by valid order in reference to the sale of any alcoholic beverage allowed by the license or permit;

(2) all other applicable certifications signed by the city secretary, where appropriate, and the county clerk that are in the pre-qualification packet prescribed by the commission;

(3) the required certification by the Comptroller of Public Accounts that the person submitting the packet holds, or has applied for and satisfies all legal requirements for, the issuance of a sales tax permit;

(4) proof of publication of notice of the application, if required by §11.39 or §61.38 of the Alcoholic Beverage Code; and

(5) a response to each item requested by the commission in the packet.

(c) A person or entity may file an application with the commission by submitting all forms, documents and information prescribed by the commission in accordance with the practices, policies, and standards relating to the processing of applications for licenses and permits. If a pre-qualification packet is required by subsection (b) of this section, the packet must be completed before an application is filed. The commission shall process the application to determine whether the application is in compliance with all provisions of the Alcoholic Beverage

Code and rules of the commission or whether there is legal reason to deny the application. If additional documentation or information is requested and not provided within the requested period of time, the application will be considered incomplete and withdrawn.

(d) On completion of its processing pursuant to subsection (c) of this section, the commission shall inform the applicant that the application:

(1) may be filed with the county judge as mandated by §61.31 of the Alcoholic Beverage Code;

(2) has been referred to the State Office of Administrative Hearings;

(3) is granted; or

(4) is refused.

(e) For purposes of §11.391 and §61.381 of the Alcoholic Beverage Code, a notice sign must be posted for 60 days before the date the permit or license is issued.

(f) A notice sign is required for purposes of §11.391 and §61.381 of the Alcoholic Beverage Code unless a license or permit authorizing the on-premises consumption of alcoholic beverages has been active at the requested location any time during the 24 months immediately preceding the filing of the application. For purposes of this subsection, an application is filed on the date a completed application packet is received by the commission.

(g) For the purposes of §61.35 (e) of the Alcoholic Beverage Code, the commission will transmit to the county tax assessor 5% of the license fee collected for each issued license in that county. This transmission will occur the month following the issuance of the license.

Note: Amended Rule Adopted: October 18, 2011; Effective: November 10, 2011

Note: Amended Rule Adopted: January 28, 2014; Effective February 18, 2014

§33.15 Use of Winery Festival Permit.

(a) This section relates to Chapter 17 of the Alcoholic Beverage Code. In the absence of specific statutory authority to the contrary, this section regulates the activities of holders of Winery Permits who also hold Winery Festival Permits.

(b) Applications for Winery Festival Permits under Chapter 17 of the Alcoholic Beverage Code, and the expiration, denial, cancellation and suspension of such applications and permits shall be in accordance with the statutes, rules and commission policies governing applications, expirations, denials, cancellations and suspensions of permits generally.

(c) No person may sell wine, or possess wine with the intent to sell it, at a farmer's market, at a civic or wine festival, or at a similar civic or wine celebration or event, without first having obtained from the commission a Winery Festival Permit Certificate authorizing sales at the event. For purposes of this section, a "celebration" is a special cultural or charitable event of a limited and specified duration that is organized for, and open to, the public. Each market, festival, celebration or other event requires a separate certificate, but a certificate may be valid for up to four consecutive days at a single location. A Winery Festival Permit Certificate may only be issued to the holder of a Winery Festival Permit.

(d) The holder of a Winery Festival Permit, or his designated representative, must apply for a Wine Festival Permit Certificate on a form provided by the commission. The application must be submitted prior to the event for which the certificate is sought. The application should be submitted at least three business days prior to the event to allow the commission time to process it. The application must be submitted to the commission's district office having jurisdiction over

the location of the event for which the certificate is sought. The application must include the following information:

- (1) the applicant's Winery Permit number;
- (2) the trade name of the Winery Permit holder associated with the Winery Festival Permit;
- (3) the location of the event where the Winery Festival Permit Certificate will be used;
- (4) the date and time of the event where the Winery Festival Permit Certificate will be used; and
- (5) a brief description of the event where the Winery Festival Permit Certificate will be used.

(e) The commission shall issue a certificate if the application is accepted. The certificate and a copy of the application must be displayed in a conspicuous place at the location of the event at all times during the event.

(f) The administrator or his designated representative may refuse to accept an application for a Winery Festival Permit Certificate if:

- (1) the application is incomplete or inaccurate;
- (2) the applicant does not qualify under subsection (c) of this section;
- (3) the event does not qualify under subsection (c) of this section; or
- (4) there are reasonable grounds to believe that issuance of the certificate will:
 - (A) result in a violation of the Alcoholic Beverage Code or the rules of the commission; or
 - (B) is otherwise detrimental to the public.

(g) The grounds for refusing to accept an application for a Winery Festival Permit Certificate shall be communicated in writing to the applicant as soon as is reasonably practical.

(h) All wine sold or possessed with the intention to sell at an event held in an area where the sale of wine has not been authorized by a local option election must comply with the terms of §16.011 of the Alcoholic Beverage Code.

(i) If a Winery Festival Permit Certificate is issued in error, the commission may rescind the certificate.

Note: Amended Rule Adopted: October 18, 2011; Effective Date: November 21, 2011

SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

§33.21 When Excise Tax Bonds Are Necessary

(a) This section is promulgated pursuant to Alcoholic Beverage Code §5.31, relating to General Powers and Duties, §204.01(g), relating to Bond Required, and §204.07, relating to Waiver of Bond Requirement.

(b) This section applies only to bonds required by §63.03 and Chapter 204 of the Alcoholic Beverage Code.

(c) The commission determines that it is no longer necessary or appropriate to require that every applicant who is subject to Chapter 204 of the Alcoholic Beverage Code furnish with its application the bond that is otherwise required by that chapter.

(d) The commission determines that it is necessary and appropriate to require that a bond under Chapter 204 of the Alcoholic Beverage Code be furnished upon renewal of its permit or license by a permittee or licensee who:

- (1) is subject to Chapter 204 of the Alcoholic Beverage Code; and
- (2) has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code.

(e) It is the commission's judgment, under Alcoholic Beverage Code §63.03, that the appropriate amount of bond that is required from the holder of a nonresident manufacturer's license to protect the revenue of the state from the tax due on beer over any six-week period is zero. Therefore no bond is required of a nonresident manufacturer, because the revenue of the state is protected for these reasons:

(1) a holder of a nonresident manufacturer's license is not liable for payment of the beer tax pursuant to Alcoholic Beverage Code §203.02; and

(2) even when the nonresident manufacturer transports beer into the state in a motor vehicle owned or leased by him, the beer must be delivered to the holder of a distributor's license, who:

- (A) also holds an importer's license;
- (B) is liable for payment of the beer tax pursuant to Alcoholic Beverage Code §203.02; and
- (C) is subject to the requirement of a bond to protect the revenue of the state when necessary and appropriate as determined in §33.22 of this title.

Note: Amended Rule Adopted: October 22, 2012; Effective: November 15, 2012

§33.22 Excise Tax Bonds.

(a) Each holder of a general distributor's license, local distributor's license, or branch distributor's license, and each holder of a manufacturer's license acting under the authority of Texas Alcoholic Beverage Code §62.12, who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on beer imposed by the Texas Alcoholic Beverage Code, §203.01. Each holder of a wholesaler's or Class B wholesaler's license who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on ale and malt liquor imposed by Texas Alcoholic Beverage Code §201.42 and the payment of the taxes on liquor other than ale or malt liquor imposed by Texas Alcoholic Beverage Code §201.03 and §201.04. Each holder of a brewer's permit acting under the authority of Texas Alcoholic Beverage Code §12.05 who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on ale and malt liquor imposed by Texas Alcoholic Beverage Code §201.42. Each holder of a winery or wine bottler's permit who has not made, on or before the due date, a required payment of \$500 or more for a tax or fee imposed by the Alcoholic Beverage Code shall furnish a bond to insure the payment of the tax on vinous liquor imposed by Texas Alcoholic Beverage Code §201.04. The requirement under this section to furnish a bond shall be imposed at the next renewal of the permit or license after the failure to make a timely payment of the amount specified in this subsection.

(b) Each bond required under this section shall be set by the administrator at an amount determined pursuant to §41.42 of this title that will protect the state against the anticipated tax liability of the principal for any six-week period based on previous average alcoholic beverage sales or estimates of the future average volume of sales.

(c) Form and contents.

(1) A bond required under this section must be executed with the licensee or permittee as principal, a qualified surety company doing business in this state as surety, and the state as payee. All such bonds must be payable in Travis County.

(2) The bond must be conditioned as required by the administrator and must include that the licensee or permittee will account for and pay all fees and taxes levied by the Texas Alcoholic Beverage Code.

(3) The form of all bonds must be approved by the administrator.

(d) Bond alternatives.

(1) A licensee or permittee required to furnish a bond under this section may furnish, in lieu of all or part of the amount of the bond required:

(A) one or more certificates of deposit or savings assigned to the state, issued by one or more banks or credit unions authorized to do business in this state; or

(B) one or more letters of credit by one or more banks or credit unions authorized to do business in this state.

(2) If an assignment of a certificate of deposit or savings or a letter of credit is furnished under paragraph (1) of this subsection, the administrator shall keep them in his possession. Interest earned on a certificate of deposit or savings is not subject to the assignment and remains the property of the owner of the certificate.

(e) A finding of deficiency as a result of an audit does not constitute a failure to pay a tax when due, if the deficiency and any applicable penalty are paid within 10 days of the date of demand for payment by the commission.

(f) A licensee or permittee required to furnish a bond under subsection (a) of this section, is again entitled to exemption from the surety requirement if the licensee or permittee:

(1) pays all delinquent taxes and fees and any applicable penalties; and

(2) pays all taxes and fees required by the Texas Alcoholic Beverage Code on or before the due date for 18 consecutive months after the month in which the delinquent taxes and fees and penalties are paid.

(g) If licensee or permittee fails to pay a tax or fee imposed by the Texas Alcoholic Beverage Code on or before the due date and the licensee or permittee holds multiple licenses or permits, the requirements for a bond shall be imposed under subsection (a) of this section only on the license or permit covering the licensed or permitted premises for which the tax or fee and any applicable penalty were not timely paid.

(h) A certificate of deposit or savings furnished by a licensee or permittee under this section must be assigned to the state in a manner approved by the administrator to secure the payment of the tax.

(i) A letter of credit furnished by a licensee or permittee under this section must be in a form and contain any conditions required by the administrator to secure the payment of the tax.

(j) If another license or permit is required, incidental to the operation of a business for which a basic license or permit is procured, the administrator may accept one bond to support all of the licenses and permits. The administrator shall determine the amount of the bond.

(k) The administrator may not cancel a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

(l) All bonds or other forms of security under this section that are in place on the effective date of this section, as amended, shall remain in place for the length of time specified on the bond or other form of security when it was furnished to the commission.

Note: Amended Rule Adopted: October 22, 2012; Effective Date: November 15, 2012

§33.23 Alcoholic Beverage License and Permit Surcharges.

(a) This section relates to Alcoholic Beverage Code §5.50.

(b) A biennial surcharge on original or renewal permit, license and certificate fees is levied against permit, license and certificate holders as follows:

Liquor Permits and Certificates	
Agent's Permit (A)	\$94.00
Airline Beverage Permit (AB)	\$327.00
Beverage Cartage Permit (PE)	\$151.00
Bonded Warehouse Permit (Dry Area) (JD)	\$136.00
Bonded Warehouse Permit (J)	\$136.00
Brewer's Permit (B)	\$576.00
Brewer's Self-Distribution Permit (DA)	\$250.00
Carrier's Permit (C)	\$252.00
Caterer's Permit (CB)	\$278.00
Direct Shipper's Permit (DS)	\$376.00
Distiller's & Rectifier's Permit (D)	\$350.00
Distiller's Agent Permit (DK)	\$94.00
Food and Beverage Certificate (FB)	\$576.00
Forwarding Center Authority (FC)	\$278.00
General Class B Wholesaler's Permit (X)	\$651.00
Industrial Permit (I)	\$261.00
Local Cartage Permit (E)	\$202.00
Local Cartage Transfer Permit (ET)	\$202.00
Local Class B Wholesaler's Permit (LX)	\$651.00
Local Distributor's Permit (LP)	\$452.00
Local Industrial Alcohol Manufacturer's Permit (LI)	\$327.00
Manufacturer's Agent's Permit (T)	\$94.00
Manufacturer's Agent's Warehousing Permit (AW)	\$651.00
Market Research Packager's Permit (MR)	\$127.00
Minibar Permit (MI)	\$350.00
Mixed Beverage Late Hours Permit (LB)	\$327.00
Mixed Beverage Permit (MB)	\$602.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate (RM)	\$602.00

Non Resident Brewer's Permit (U)	\$376.00
Non Resident Seller's Permit (S)	\$376.00
Package Store Permit (P)	\$501.00
Package Store Tasting Permit (PS)	\$176.00
Passenger Train Beverage Permit (PT)	\$602.00
Private Carrier's Permit (O)	\$252.00
Private Club Beer and Wine Permit (NB)	\$901.00
Private Club Late Hours Permit (NL)	\$350.00
Private Club Registration Permit (N)	\$901.00
Private Storage Permit (L)	\$202.00
Promotional Permit (PR)	\$376.00
Public Storage Permit (K)	\$202.00
Wholesaler's Permit (W)	\$701.00
Wine and Beer Retailer's Permit Excursion Boat (V)	\$553.00
Wine and Beer Retailer's Permit Railway Car (Y)	\$553.00
Wine Bottler's Permit (Z)	\$602.00
Wine Only Package Store Permit (Q)	\$553.00
Winery Festival Permit (GF)	\$278.00
Winery Permit (G)	\$701.00
Winery Storage Permit (GS)	\$202.00
Beer Licenses and Wine and Beer Permits	
Agent's Beer License (BK)	\$94.00
Beer Retailer's Off Premise License (BF)	\$553.00
Beer Retailer's On Premise License (BE)	\$553.00
Branch Distributor's License (BC)	\$701.00
Brewpub License (BP)	\$426.00
General Distributor's License (BB)	\$701.00
Importer's Carrier's License (BJ)	\$202.00
Importer's License (BI)	\$278.00
Local Distributor's License (BD)	\$701.00
Manufacturer's License (BA)	\$651.00
Manufacturer's Self-Distribution License (DB)	\$250.00
Manufacturer's Warehouse License (MW)	\$553.00
Non Resident Manufacturer's License (BS)	\$576.00
Retail Dealer's On Premise Late Hours License (BL)	\$327.00
Storage License (SL)	\$202.00
Wine and Beer Retailer's Off Premise Permit (BQ)	\$553.00
Wine and Beer Retailer's Permit (BG)	\$553.00

(c) A surcharge on temporary permit and license fees is levied against permit and license holders as follows:

Daily Temporary Mixed Beverage Permit (TB)	\$201.00
Daily Temporary Private Club Registration Permit (TN)	\$226.00
Temporary Charitable Auction Permit (CA)	\$201.00

Temporary License (BH)	\$201.00
Temporary Wine and Beer Retailers Permit (BH) and (HP)	\$201.00
Temporary Special 3 Day Wine and Beer License (SB)	\$201.00

(d) An organization that holds a private club exemption certificate permit under Alcoholic Beverage Code §32.11 is exempt from the requirement to pay a surcharge.

(e) Each surcharge imposed by this section is for the term of the original or renewal permit, license or certificate to which the surcharge applies.

(f) The permit, license or certificate surcharge is due and payable at the same time and in the same place and manner as the original or renewal permit, license or certificate fee to which the surcharge applies.

(g) Failure or refusal to timely pay the permit, license, or certificate surcharge is considered the same as failure to timely pay the original or renewal permit, license or certificate fee, and the same penalties apply.

(h) The fees and surcharges for a permit or license may not be prorated or refunded.

Note: Amended Rule Adopted: July 26, 2011; Effective Date: September 1, 2011

Note: Amended Rule Adopted: September 24, 2013; Effective Date: October 24, 2013

§33.24 Conduct Surety Bonds and Performance Bonds.

(a) This section applies to conduct surety bonds, which are the bonds required by Alcoholic Beverage Code §11.11 and §61.13, and to performance bonds, which are the bonds required by Alcoholic Beverage Code §11.61(b-1) and §61.71(l). Subsections (b) - (h), (j), (k) and (m) of this section apply to both conduct surety bonds and performance bonds. Subsections (i) and (l) of this section apply only to conduct surety bonds. Subsection (n) of this section applies only to performance bonds.

(b) When either a conduct surety bond or a performance bond is required under the Alcoholic Beverage Code, it must be executed only on forms prescribed by this agency with the licensee or permittee as principal, a qualified surety company doing business in this state as surety and the state as payee.

(c) All conduct surety bonds and performance bonds of permittees and licensees shall be payable in Travis County.

(d) A separate conduct surety bond and a separate performance bond, when required, shall be obtained, submitted and maintained for each license or permit.

(e) A permittee or licensee who is required to file a conduct surety bond or performance bond may furnish instead of all or part of the required bond amount:

(1) one or more certificates of deposit assigned to the state issued by a federally insured bank or by a credit union authorized to do business in this state; or

(2) one or more letters of credit issued by a federally insured bank or credit union authorized to do business in this state.

(f) If an assignment of a certificate of deposit, savings account or letter of credit are furnished in lieu of either a conduct surety bond or a performance bond, the administrator or his designee shall keep them in his possession. Interest earned on a certificate of deposit or savings

account is not subject to the assignment and remains the property of the owner of the certificate of deposit or savings account.

(g) A certificate of deposit or savings account furnished in lieu of either a conduct surety bond or a performance bond by a licensee or permittee must be assigned to the state, in a manner approved by the administrator or his designee, to secure payment to the state.

(h) A letter of credit furnished in lieu of either a conduct surety bond or a performance bond by a licensee or permittee, under this section, must be on a form approved by the administrator or his designee and contain any conditions required by the administrator to secure payment to the state.

(i) A conduct surety bond, assignment of certificate of deposit, savings account, or letter of credit must cover the minimum time required of the applicant to qualify for exemption from the surety requirement imposed by Alcoholic Beverage Code §11.11 and §61.13.

(j) Qualifications of Surety.

(1) A surety company, to qualify to provide bonds under this section, must be licensed by this state and in "good standing" with the State Board of Insurance, Comptroller of Public Accounts, Secretary of State and any other regulatory agencies with jurisdiction over its affairs.

(2) A bank or credit union, in addition to the requirements of Alcoholic Beverage Code §11.11 and §61.13, must have a physical facility in this state to accept cash deposits, make cash advances to customers and carry out day-to-day operations within this state.

(k) Submission of Conduct Surety Bond or Performance Bond.

(1) If required by Alcoholic Beverage Code §11.11 or §61.13, an applicant for an original or renewal license or permit must submit, at the time of its application, the bond, or alternative form of surety allowed in subsection (e) of this section, as prescribed by those sections, and must meet the requirements of this section.

(2) If required by Alcoholic Beverage Code §11.61(b-1) or §61.71(l), an applicant for an original license or permit must submit, at the time of its application, the bond, or alternative form of surety allowed in subsection (e) of this section, as prescribed by those sections, and must meet the requirements of this section.

(3) Failure to submit the necessary bond or alternative form of surety allowed in subsection (e) of this section in proper form will result in the denial of the application.

(l) Forfeiture of a Conduct Surety Bond.

(1) When a license or permit is cancelled, or upon a final adjudication that the licensee or permittee has committed three violations of the Alcoholic Beverage Code since September 1, 1995, the commission shall notify the licensee or permittee, in writing, of its intent to seek forfeiture of the bond or alternative form of surety allowed in subsection (e) of this section. For purposes of this section, an order issued pursuant to an agreement of the parties in which the permittee or licensee waives its right to a hearing is a final adjudication of the violation that is the subject of the agreement and order.

(2) The licensee or permittee may, within 30 days of the notice specified in paragraph (1) of this subsection, request hearing on the question of whether the criteria established by Alcoholic Beverage Code §11.11 and §61.13 and by this section for forfeiture of the bond, or alternative form of surety allowed in subsection (e) of this section, have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(3) Evidence that an agent or servant of the licensee or permittee has been adjudicated guilty of, or granted deferred adjudication for, an offense under the Alcoholic

Beverage Code, because of conduct occurring during the performance of his/her duties for the licensee or permittee, shall constitute evidence of an adjudication that the licensee or permittee has violated a provision of the Alcoholic Beverage Code. This paragraph only applies to violations which were not attributable to the licensee or permittee because of the operations of Alcoholic Beverage Code §106.14.

(4) Upon entry of final order against the licensee or permittee in the hearing described in paragraph (2) of this subsection, or upon waiver of said hearing by the licensee or permittee, the commission shall notify the surety company, bank, or credit union to remit to the state the amount of surety required within ten days after notification.

(5) The commission may institute action to recover the amount of the surety in its own name, for the benefit of the state, as set forth in Alcoholic Beverage Code §11.70.

(m) Release of Surety.

(1) Upon expiration of the license or permit, its voluntary cancellation, or upon the applicant's subsequent approval for exemption from the surety requirement, the licensee or permittee may request the release and return of the security supporting their license or permit.

(2) The release of this surety will not be unreasonably withheld; however, the surety company, bank, or credit union is not released from its obligation until it receives written notice of the release from the commission.

(n) Performance Bonds. The first bond filed by a licensee or permittee with the commission as prescribed under §11.61(b-1) and §61.71(j) of the Alcoholic Beverage Code shall be in the amount of \$2,000. In the event the first bond is forfeited to the commission, a licensee or permittee must file a second bond with the commission as prescribed under those provisions in the amount of \$4,000 before a license or permit may be reinstated. In the event the second bond is forfeited to the commission, a licensee or permittee must file a third bond issued under those provisions in the amount of \$6,000 before a license or permit may be reinstated. If a permit or license that is secured by a performance bond is cancelled, the performance bond in place at the time of cancellation is forfeited to the commission.

Note: Amended Rule Adopted: October 22, 2012; Effective Date: November 15, 2012

§33.25 Temporary and Secondary Permits and Licenses.

(a) This section relates to Alcoholic Beverage Code §11.09 and §61.03.

(b) A secondary permit or license which requires the holder to first obtain another permit, including a late hours permit, expires on the same date the primary permit expires.

(c) A temporary permit or license expires on the date indicated on the license or permit or on the same date as the primary permit, whichever occurs earlier.

(d) The fees and surcharges for a secondary or temporary permit or license may not be prorated or refunded.

Note: Amended Rule Adopted: July 26, 2011; Effective Date: August 21, 2011

§33.26 Manufacturer's Agent's Warehousing Permit Fee.

The annual fee for a manufacturer's agent's warehousing permit under Chapter 55 of the Alcoholic Beverage Code shall be \$750.

Note: New Rule Adopted: August 22, 2008; Effective Date: September 11, 2008
Readopted Without Changes and Effective: March 24, 2015

§33.27 Bonds for Alternating Brewery Proprietorships and Contract Brewing Arrangements.

- (a) This section relates to Alcoholic Beverage Code §§11.71, 12.01(a)(6), 13.04(c), 61.41(d) and 62.01(a)(5).
- (b) A bond in the amount of \$30,000 must be posted with the commission by each applicant for or holder of a brewer's permit or nonresident brewer's permit that:
 - (1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and
 - (2) does not own a fee interest in a brewing facility.
- (c) A bond in the amount of \$30,000 must be posted with the commission by each applicant for or holder of a manufacturer's license or nonresident manufacturer's license that:
 - (1) is a party to an alternating brewery proprietorship or a contract brewing arrangement; and
 - (2) does not own a fee interest in a manufacturing facility.
- (d) A bond required by subsection (b) or (c) of this section must:
 - (1) be made payable to the state;
 - (2) be executed only on a form prescribed by the commission, with the permittee or licensee as principal and a qualified surety company doing business in the state as surety;
 - (3) be payable in Travis County;
 - (4) cover the permit or license period; and
 - (5) state on the face of the bond that the holder of the permit or license agrees that the amount of the bond shall be paid to the state if the permit or license is revoked.
- (e) A separate bond, when required by subsection (b) or (c) of this section, must be posted with the commission for each permit or license. The bond must be maintained until:
 - (1) it is released or forfeited under this section; or
 - (2) it is terminated by the surety pursuant to Alcoholic Beverage Code §11.71, if it is a bond that is required by subsection (b) of this section.
- (f) To qualify to provide bonds under this section, a surety company must be licensed by this state and be in good standing with the State Board of Insurance, Comptroller of Public Accounts, Secretary of State, and any other regulatory agencies with jurisdiction over its affairs.
- (g) If a bond is required by subsection (b) or (c) of this section, an applicant for an original or renewal permit or license must submit the bond at the time of its application for the permit or license. Failure to submit the bond in proper form will result in denial of the application.

(h) A permittee or licensee who was not subject to the bond requirements of subsection (b) or (c) of this section at the time of application must post the required bond at the time it becomes subject to those requirements.

(i) Forfeiture of Bond.

(1) When a permit or license is revoked, the commission shall notify the permittee or licensee in writing of its intent to seek forfeiture of the bond.

(2) The permittee or licensee may, within 30 days of the notice specified in paragraph (1) of this subsection, request a hearing on the question of whether the criteria established by this section for forfeiture of a bond have been satisfied. The hearing shall be conducted in accordance with Chapter 2001 of the Government Code.

(3) Upon entry of a final order against the permittee or licensee in the hearing described in paragraph (2) of this subsection, or upon waiver of hearing by the permittee or licensee, the commission shall notify the surety company to remit to the state the full amount of the surety required within ten days after notification.

(j) Release of Surety.

(1) A permit or license holder may request release and return of the surety required by subsection (b) or (c) of this section upon:

(A) expiration of the permit or license;

(B) voluntary cancellation of the permit or license;

(C) verification that the applicant or permit or license holder has acquired fee interest in a brewing or manufacturing facility (as appropriate in reference to subsections (b) and (c) of this section); or

(D) verification that the permit or license holder no longer is a party to an alternating brewery proprietorship or contract brewing arrangement.

(2) The release of this surety will not be unreasonably withheld, but the surety company is not released from its obligation until it receives written notice of the release from the commission.

(k) The administrator may not cancel a bond until the surety company has paid and discharged in full all of its liabilities to the state on the bond as of the date of cancellation.

Note: New Rule Adopted: September 24, 2013; Effective: October 24, 2013

SUBCHAPTER C. LICENSE AND PERMIT ACTION

§33.31 Administrative Inactivation, Reinstatement and Renewal of a License or Permit.

(a) This section implements Alcoholic Beverage Code §11.44 and §102.32(d-1) and clarifies procedures related to administrative inactivation involving either voluntary or involuntary suspensions.

(b) Administrative inactivation refers to the placing of a license or permit in administrative suspense under this section and without a due process hearing. During administrative inactivation (whether voluntary or involuntary), the license or permit holder may not engage in any authorized activities allowed under that license or permit. The term of the license or permit

will not be tolled during administrative inactivation but will expire on the date indicated on the face of the license or permit.

(c) Unless otherwise disqualified or provided for by this section, the commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit upon receipt of an affidavit by the landlord, on a form prescribed by the administrator, that the premises has been abandoned by the licensee or permittee and that the licensee or permittee no longer has any interest in the premises..

(d) The commission may without a hearing administratively inactivate and place in administrative suspense a license or permit if the commission receives a final, non-appealable court judgment of eviction concerning against a permitted or license premises that is subject to a pending or unexpired suspension order or for which a cancellation or suspension action has been initiated.

(e) The commission may, without a hearing, administratively inactivate and place in administrative suspense a license or permit if the license or permit holder is delinquent in the payment of an account for liquor under Code §102.32 and either subsection (c) or (d) of this section applies. The Commission may not accept the voluntary cancellation or suspension of a license or permit or allow a license or permit to be renewed or transferred if the license or permit holder is delinquent in the payment of an account for liquor under Section 102.32 of the Texas Alcoholic Beverage Code.

(f) The commission may, but is not required to, administratively inactivate and place in voluntary suspense a license or permit if no administrative action is pending against the license or permit and either:

- (1) the actual license or permit is submitted by the license or permit holder; or
- (2) a sworn statement is submitted by the license or permit holder stating that the

actual license or permit is unavailable for surrender and why.

(g) If a license or permit has been placed in voluntary administrative inactivation and the license or permit has not expired then the license or permit may be reinstated to active status, but only if the same requirements and qualifications as an applicant for an original license or permit are met. If a license or permit is reinstated under this subsection, the license or permit fee for the remainder of the license or permit term during which it was placed in administrative inactive status is not required.

(h) A license or permit may be renewed while on administrative inactivation only if, prior to the expiration date of the license or permit, a completed renewal with required supporting documents and all necessary state fees and surcharges is filed in accordance with all applicable sections of the code and rules. Otherwise the license or permit will expire at the end of its existing term.

(i) The effective date of the administrative inactivation of a license or permit or its voluntary cancellation will be the date the statement or other document required by this section is received in the licensing division or any other date mutually agreed to by the parties.

Note: Amended Rule Adopted: March 25, 2014; Effective: April 15, 2014

§33.32 Notification of Expired or Suspended Licenses and Permits.

(a) This rule refers to §§11.091(b) and 61.031(b) of the Alcoholic Beverage Code.

(b) Notification to wholesalers of expired or suspended licenses or permits shall be by electronic publication of such information on the commission's Internet web page.

(c) For purposes of the above referenced sections, an expired license or permit shall be one which has ceased to be active because of the operation of time and for which no timely and sufficient application for renewal has been filed with the commission.

(d) For purposes of the above referenced sections, a suspended license or permit shall be one that has ceased to be active by operation of the procedures described in §33.31 of these rules.

Note: Rule Adopted: October 25, 1999; Effective: November 21, 1999

Readopted Without Changes and Effective: March 24, 2015

§33.33 Notification Requirements.

(a) A person who holds a license, permit or certificate issued by the Alcoholic Beverage Commission shall maintain a current mailing address, telephone number and email address on file with the division that has issued the license, permit or certificate.

(b) A person who holds a license, permit, or certificate issued by the Alcoholic Beverage Commission shall file a written notice of change of mailing address with the Commission within seven (7) business days of the change. A person who holds a certificate issued by the Commission shall file the change of address with the Seller/Server Training Division at TABC, P.O. Box 13127, Austin, Texas 78711.

(c) A notice sent to a person by the Alcoholic Beverage Commission shall be sent by first class mail to the last known mailing address of a person that is on file with the commission.

(1) A person notified by mail under this subsection is presumed notified on the third day after the date on which the notice is mailed.

(2) This subsection does not apply to a notice required by Government Code §2001.054.

Note: New Rule Adopted: January 25, 2008; Effective Date: February 20, 2008.

Note: Amended Rule Adopted: May 28, 2015; Effective Date: June 18, 2015

SUBCHAPTER D. CONFLICTS OF INTEREST

§33.41 Financial Interest.

For the purposes of Alcoholic Beverage Code, §102.06, "a person who has a financial interest in a package store permit or wine only package store permit" shall mean one who holds an ownership interest in the business, or assets thereof, of a package store or wine only package store permittee. This rule shall not be construed as authorizing any unfair trade practice or discrimination in violation of the tied-house provisions of the Alcoholic Beverage Code.

CHAPTER 34. SCHEDULE OF SANCTIONS AND PENALTIES

§34.1 General Provisions.

(a) This rule relates to §§11.61, 11.64, 11.641 and 106.13 of the Alcoholic Beverage Code.

(b) Agents, compliance officers or other specifically designated commission personnel have authority to settle a complaint issued by the commission against a person for a violation of the

Texas Alcoholic Beverage Code (Code), prior to filing a contested case under Government Code, Chapter 2001, Subchapter C (Administrative Procedure Act).

(c) A settlement authorized by this chapter must reflect the number of days a permit will be suspended or the amount of civil penalty authorized per day in lieu of suspension and shall conform to the other provisions of this chapter.

(d) A written warning may be issued for any violation if it is determined by designated commission personnel to be an effective deterrent from further violations of the Code.

(1) A written warning may be used as an aggravating circumstance for purposes of determining the appropriate sanction under §34.2.

(2) A written warning is subject to the rights and procedures of a contested case under the Administrative Procedure Act.

(3) A written warning is an administrative notice issued by a representative of the commission to the permit or license holder documenting that a violation of the TABC code or rules has occurred.

(e) Any case alleging a sale to a minor or intoxicated person in violation of Alcoholic Beverage Code §§11.61(b)(14), 61.71(a)(6) or 101.63 in which the unlawful sale or service directly or indirectly caused death or serious bodily injury shall be referred directly to the Legal Services Division by district or regional personnel without an offer of settlement or compromise provided to the permittee/licensee. For purposes of this section, “serious bodily injury” means as defined in §1.07(a)(46) of the Texas Penal Code.

(f) Each suspension of a permit or license shall run for consecutive days. A person assessed a suspension by the commission may be provided with an opportunity to pay a civil penalty in lieu of a suspension as provided by §11.64 of the Code. The commission may, in its discretion, allow a licensee/permittee to divide an imposed sanction between civil penalty and suspension.

(g) A subsequent violation of the Code or rule will result in a sanction in the next higher violation level if the subsequent violation:

(1) is for a health, safety and welfare violation and occurs within 36 months of the prior violation, or

(2) is for a violation listed in the major regulatory violation category within 24 months of the prior violation, and

(3) the person has been given written notice of the prior violation, or

(4) the subsequent violation is issued during an undercover operation

(h) The list of violations in §34.2 is not intended to be an exhaustive list of possible violations of the Code or rules of the commission. A sanction for a violation of the Code or rules that is not listed in §34.2 must be approved by either the assistant administrator for field operations or a division director prior to entering into a settlement.

(i) A person authorized to enter into a settlement under this section is also authorized to recommend a deviation from sanctions in §34.2 when aggravating or mitigating circumstances are found to exist.

(1) A recommendation to deviate from sanctions in §34.2 must be made in writing.

(2) The administrator or his designee must approve a recommendation to deviate from §34.2 before the settlement may be offered.

(j) This chapter does not apply to a contested case brought under Chapters C and D of the Administrative Procedure Act, or a complaint or violation referred to the legal division of the commission for resolution.

Note: Amendment Adopted: April 28, 2009; Effective Date: May 25, 2009

§34.2 Schedule of Sanctions and Penalties for Health, Safety and Welfare Violations.

An act or failure to act which results in a violation of the code or rules that represents a threat to the public health, safety, or welfare will be assessed sanctions and penalties as follows:

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Minor Related Offenses			
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71(a)(12), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day
Permit a minor to possess or consume an alcoholic beverage in violation of §106.13, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Sale of an alcoholic beverage to a minor in violation of §106.03, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	48-Cancel \$300 per day
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §§22.12 and 28.11, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury, death or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	25-35 days \$300 per day	Cancel	Cancel
Failure to report a breach of the peace in violation of Alcoholic Beverage Code §§11.61(b)(21), 61.71(a)(31).	2-5 days \$300 per day	4-10 days \$300 per day	12-Cancel \$300 per day
Possession of, sale or delivery of, or permitting the sale or delivery of narcotics by a licensee or permittee or possession of any equipment used or designed for the administering of a narcotic in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	25-35 days \$300 per day	Cancel	Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	8-12 days \$300 per day	16-24 days \$300 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	17-25 days \$300 per day	34-50 days \$300 per day	Cancel
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code. Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §§11.61(b)(22), 61.71(a)(18) or 105.06, Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	30-Cancel \$300 per day

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses.			
Examples (not limited to the following offenses):			
Possession of any gambling paraphernalia or device;	5-7/\$300	10-14/\$300	Cancel
Gambling on a licensed premises;	8-12/\$300	16-24/\$300	Cancel
Keeping a gambling place;	13-18/\$300	26-36/\$300	Cancel
Prostitution;	5-7/\$300	10-14/\$300	Cancel
Promotion of prostitution;	13-18/\$300	26-36/\$300	Cancel
Prohibited Activities by Persons Younger Than 18 (See AB Code 106.15, Penal Code 43.05, Penal Code 43.25 or Penal Code 43.251);	Cancel	Cancel	Cancel
Obscenity.	8-12/\$300	16-24/\$300	Cancel
Violation of city codes (relating to health, safety and welfare).	3-5 days \$300 per day	6-10 days \$300 per day	18-Cancel \$300 per day

§34.3 Schedule of Sanctions and Penalties for Major Regulatory Violations.

An act or failure to act which results in a violation of a major regulatory provision of the code or rules will be assessed sanctions and penalties as follows:

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Selling wine over 17% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code.	Original suspension plus 8-13 days \$300 per day	Original suspension plus 16-26 days \$300 per day	Cancel
Subterfuge – Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code.	Cancel		
Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code.	Cancel		
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §§69.12 or 61.71(a)(9), Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	Cancel
Permitting an open container on the premises of any off-premise license or permit in violation of §§71.01 or 24.09, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Purchase of an alcoholic beverage from an unauthorized source in violation of §§61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code.	6-8 days \$300 per day	12-16 days \$300 per day	Cancel
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	8-13 days \$300 per day	16-26 days \$300 per day	Cancel
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5-7 days \$300 per day	10-14 days \$300 per day	Cancel
Selling an alcoholic beverage away from a licensed premises. §61.06	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code.	Cancel		
Sale or delivery of unauthorized alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code. §§11.01, 19.01, 61.01 or 62.01	6-8 days \$300 per day	12-16 days \$300 per day	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code.	3-5 days \$300 per day	6-10 days \$300 per day	18-30 days \$300 per day
Improper record keeping in violation of agency rules §§41.49, 41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.	2-4 days \$300 per day	4-8 days \$300 per day	12-24 days \$300 per day
Knowingly filed false report, application, form, or record. §§11.61, 61.71, 62.05, 64.04, or 203.09	Cancel		
Knowingly failed to keep record or file return in manner required. §§61.71, 61.74, 62.05, 64.04, 203.09, or 206.01	6-12 days \$300 per day	12-24 days \$300 per day	Cancel
Retail cash/credit laws violation of cash or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.	2-5 days \$300 per day	4-10 days \$300 per day	12-30 days \$300 per day

Note: Amended Rule Adopted: July 27, 2010; Effective Date: January 1, 2011

§34.4 Attribution of Actions of Employee to License or Permit Holder.

(a) A license or permit holder who claims that the actions of an employee are not attributable to the license or permit holder under Alcoholic Beverage Code §106.14(a) must provide to the commission, not later than 10 days after receipt of an administrative notice of violation, an affidavit indicating that the license or permit holder was in compliance with the requirements of Alcoholic Beverage Code §106.14(a) at the time of the violation for which the administrative notice was issued. At a hearing in which the license or permit holder claims the benefits of Alcoholic Beverage Code §106.14(a), the license or permit holder may be required to present additional evidence to support such claim.

(b) If an employee performs an action described in paragraphs (1) or (2) of this subsection at a time when the employee does not possess a currently valid seller server certificate, then the action of the employee does not meet the requirements of Alcoholic Beverage Code §106.14(a)(2) and therefore shall be attributable to the license or permit holder.

(1) The employee sells, serves, dispenses or delivers an alcoholic beverage to:

- (A) a person who is not a member of a private club on the club premises;
 - (B) a minor; or
 - (C) an intoxicated person.
 - (2) The employee allows consumption of an alcoholic beverage by:
 - (A) a person who is not a member of a private club on the club premises;
 - (B) a minor; or
 - (C) an intoxicated person.
- (c) Proof by the commission that an employee performed an action described in paragraph (1) or (2) of this subsection on three or more occasions within a 12-month period shall create a rebuttable presumption that the license or permit holder has indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3). The rebuttable presumption is created regardless of whether the employee performing the action described in paragraph (1) or (2) of this subsection on a second or subsequent occasion is the same person.
- (1) An employee sold, served, dispensed or delivered an alcoholic beverage to:
 - (A) a person who is not a member of a private club on the club premises;
 - (B) a minor; or
 - (C) an intoxicated person.
 - (2) An employee allowed consumption of an alcoholic beverage by:
 - (A) a person who is not a member of a private club on the club premises;
 - (B) a minor; or
 - (C) an intoxicated person.
- (d) For purposes of satisfying the condition precedent set forth in subsection (c) of this section, proof shall be demonstrated by:
- (1) producing final orders issued by the commission or a court of competent jurisdiction finding that the license or permit holder violated Alcoholic Beverage Code §§2.02, 11.61(b)(14), 32.17(a)(1), 61.71(a)(6) or 106.13(a) on two past occasions; and
 - (2) establishing a prima facie case that an employee of the license or permit holder violated Alcoholic Beverage Code §§2.02, 11.61(b)(14), 32.17(a)(1), 61.71(a)(6) or 106.13(a) on a third or subsequent occasion.
- (e) For purposes of subsection (d) of this section, all incidents offered to satisfy the condition precedent set forth in subsection (c) of this section shall be for the same type of offense and shall have occurred within a 12-month period as calculated from the dates the incidents occurred.
- (f) There is a rebuttable presumption that a license or permit holder has indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3) if the commission presents sufficient proof that a license or permit holder fails to meet any of the standards set forth in paragraphs (1) - (5) of this subsection.
- (1) The license or permit holder requires each employee to present a seller server certificate within 30 days of his initial employment date.
 - (2) The license or permit holder requires each employee to maintain a currently valid seller server certificate.
 - (3) The license or permit holder adopts written policies and procedures that are designed to prevent, and that affirm a strong commitment by the license or permit holder to prohibit:
 - (A) the sale, service, dispensation or delivery of an alcoholic beverage to:
 - (i) a person who is not a member of a private club on the club premises;

- (ii) a minor; or
 - (iii) an intoxicated person; and
 - (B) the consumption of an alcoholic beverage by:
 - (i) a person who is not a member of a private club on the club premises;
 - (ii) a minor; or
 - (iii) an intoxicated person.
- (4) The license or permit holder ensures that all employees have read and understood the license or permit holder's policies and procedures described in paragraph (3) of this subsection.
- (5) The license or permit holder maintains records for at least one year after the date employment was terminated that show that each employee read and understood the license or permit holder's current policies and procedures described in paragraph (3) of this subsection.
- (g) For purposes of this section, "employee" includes all persons paid by a license or permit holder to sell, serve, dispense, or deliver alcoholic beverages or to immediately manage, direct, supervise or control the sale or service of alcoholic beverages.
- (h) At a hearing in which the license or permit holder asserts the affirmative defense established in Alcoholic Beverage Code §106.14(a), the commission may present evidence to establish a rebuttable presumption under this section. If the evidence is sufficient to establish a prima facie case, the burden of persuasion in the proceeding shifts to the license or permit holder to show that it has not indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3).
- (i) The rebuttable presumptions authorized in this section are not the exclusive means by which the commission may establish that a license or permit holder has indirectly encouraged a violation of the law within the meaning of Alcoholic Beverage Code §106.14(a)(3).
- (j) Notwithstanding §34.1(j), this section applies to contested cases under the Administrative Procedure Act and to complaints or violations referred to the legal division of the commission for resolution.

Note: New Rule Adopted: July 27, 2010; Effective Date: January 1, 2011

§34.5 Mandatory Participation in Seller Server Certification.

- (a) After notice and an opportunity for hearing, the commission may require by written order that a licensee or permittee require all of its employees to acquire and maintain seller server certification under Chapter 50 of this Title, pursuant to Alcoholic Beverage Code §106.14. Such requirement may be imposed on a licensee or permittee that has:
 - (1) violated a provision of the code or rules relating to the sale, service, dispensation or delivery of alcoholic beverages to a minor or intoxicated person more than once in a twelve month period; or
 - (2) been found, by administrative order or court of competent jurisdiction, to have engaged in conduct directly or indirectly encouraging violations of law within the meaning of Alcoholic Beverage Code §106.14(a)(3).
- (b) An order issued under this section shall remain in effect until such time as the licensee or permittee has established 24 continuous months of operation from the date of the last violation without violation of a provision of the code or rules relating to the sale, service, dispensation or delivery of alcoholic beverages to a minor or intoxicated person.

(c) A licensee or permittee who wants a hearing prior to the issuance of an order authorized by this section must request the hearing within 10 days of receipt of notice from the commission.

(d) Notwithstanding subsection §34.1(j), this section applies to contested cases under the Administrative Procedure Act and to complaints or violations referred to the legal division of the commission for resolution.

Note: New Rule Adopted: July 27, 2010; Effective Date: January 1, 2011

CHAPTER 35. ENFORCEMENT

SUBCHAPTER A. TRANSPORTATION OF LIQUOR

§35.1 Transportation of Alcoholic Beverages by Package Stores and Wine Only Package Stores.

(a) This rule relates to transportation of alcoholic beverages shipped under the authority of §§22.08, 23.04 or 24.04 of the Alcoholic Beverage Code.

(b) Shipments of alcoholic beverages made under the authority of §§22.08, 23.04 or 24.04 of the Alcoholic Beverage Code may only be made by holders of a carrier's permit or a local cartage permit.

(c) Package store and wine only package store permittees making shipments of alcoholic beverages governed by this rule shall prepare an invoice in duplicate. The invoice shall show:

- (1) the date of the shipment;
- (2) the quantity, container size and brands of alcoholic beverages shipped; and
- (3) the store name and address of the origination and destination point of the

shipment.

(d) The original of the invoice mandated by this rule shall be maintained at the originating store for four years after the date of shipment. The copy of the invoice shall accompany the shipment and shall be maintained at the receiving store for four years after the date of shipment.

(e) Shipments of alcoholic beverages governed by this rule may not be transported outside the county in which the shipment originated, and must be transported by the most direct practical route from point of origination to point of destination. Shipments made by local distributor permittees under the authority of §23.04 of the Alcoholic Beverage Code are subject to the restrictions expressed in §102.56(d) of the code.

Note: Rule Adopted: July 26, 1999; Effective: August 16, 1999

§35.2 Importation of Liquor.

(a) This rule relates to liquor imported into the state under the authority of §§41.01(a) or 42.01(a) of the Alcoholic Beverage Code.

(b) Liquor imported into the state for resale may only be transported by the holder of a carrier's permit or a private carrier's permit. Shipments of liquor into the state must be accompanied by a copy of the invoice covering that liquor.

(c) Non-resident sellers delivering liquor for importation to private carrier permittees shall cause the invoice covering that shipment of liquor to show delivery to the private carrier.

(d) Private carriers shall transport liquor by the most direct route practical to the place of destination.

Note: Rule Adopted: July 26, 1999; Effective: August 16, 1999

§35.3 Vehicle Identification.

(a) This rule relates to §§42.01, 42.04, 43.05 and 74.08(b) of the Alcoholic Beverage Code.

(b) Each vehicle covered by a private carrier's permit, a local cartage permit, or used by an agent's permittee under the authority of §42.01(a) of the Alcoholic Beverage Code, shall have painted or printed or attached in a conspicuous place on such vehicle the following letters and numerals, each letter and numeral being not less than 1 ½ inches in height and the correct permit number being inserted in the blank space. Such letters and numerals shall never be covered from public view when such vehicle is being used in the alcoholic beverage business.

(1) On a vehicle covered by a private carrier's permit:

TABC

Permit No. O-_____

(2) On a vehicle covered by a local cartage permit:

TABC

Permit No. E-_____

(3) On a vehicle covered by an agent's permit:

TABC

Permit No. O-_____

Note: Amendment Adopted: July 26, 1999; Effective: August 16, 1999

Amendment Adopted: March 24, 2015; Effective: April 14, 2015

§35.5 Private Carrier's Permit Safety Program.

(a) Each holder of a private carrier's permit shall carry at least \$500,000 of liability insurance and file proof of insurance with the commission for each vehicle registered. Such insurance must be sufficient to pay, not more than the amount of the insurance, for each final judgment against the permit holder (combined single limit) for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence, or both.

(b) Each holder of a private carrier's permit shall maintain proof of insurance in their permitted vehicles at all times. This proof shall be in the form prescribed by the commission and the Texas Department of Insurance in coordination with the Texas Department of Public Safety.

(1) No insurance policy or certificate of insurance will be accepted by the commission unless issued by an insurance or surety company licensed and authorized to do business in the State of Texas. The commission adopts Department of Insurance "Form E" (Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate) and "Form K" (Uniform Notice of Cancellation of Motor Carrier Insurance Policies) for the purposes of this section (which forms have been prescribed and approved by the Department of Insurance). These forms must be filed with the commission and signed or countersigned by an authorized agent of the insurance or surety company. The commission will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, Article 1.14-2 and rules adopted by the Department of Insurance under that article.

(2) If the insurer or surety of a permittee subject to this rule becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the permittee may apply for approval of a surety bond or insurance policy issued by another surety or insurer upon filing an affidavit with the commission. Such affidavit shall be executed by the permittee and show that:

(A) no accidents or claims have occurred during the insolvency of the insurance carrier or surety; and

(B) that all damages and claims have been satisfied; and

(C) the commission shall notify the Texas Department of Public Safety of each notice received under this subsection.

(c) Each holder of a private carrier's permit shall complete an affidavit stating that the permittee has knowledge of, and will conduct operations in accordance with, all federal and state safety regulations.

(d) The Department of Public Safety may request that the commission suspend or cancel a private carrier's permit if a permittee:

(1) has an unsatisfactory safety rating under 49 Code of Federal Regulations, Part 385; or

(2) has multiple violations of a provision of Texas Civil Statutes, Article 6675d, a rule adopted under that article or the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701d). A request for suspension or revocation under this subsection shall be submitted in writing by the executive director of the Texas Department of Public Safety, and shall include appropriate documentation evidencing the violation. The commission or administrator may suspend or cancel an original or renewal permit in response to such a request, after notice and hearing under the Alcoholic Beverage Code and the rules of the commission, pursuant to Alcoholic Beverage Code, §11.61(b)(7).

§35.6 Regional Forwarding Centers.

(a) This rule relates to Alcoholic Beverage Code, §§37.01(2), 62.08, 63.01 and 42.01(a).

(b) Members of the manufacturing tier who are transporting alcoholic beverages into the state, or from point to point within the state under the authority of §§37.01(2), 42.01(a), 62.08(a) and 63.01 may temporarily hold such alcoholic beverages in a regional forwarding center, subject to the following conditions:

(1) A regional forwarding center is a facility wherein alcoholic beverages may be held under the control of the manufacturing tier member responsible for shipping the alcoholic beverages.

(2) The regional forwarding center may be operated by a third party who acts as the agent of the manufacturing tier member in arranging for interstate or intrastate shipments of alcoholic beverages to permittees and licensees authorized to receive such beverages or for shipment to locations outside the state.

(3) No member of the wholesale or retail tiers of the alcoholic beverage industry may, directly or indirectly, hold any interest in, or right of operation of a regional forwarding center.

(4) No sale of alcoholic beverages may be made to a person or entity from a regional forwarding center. For purposes of this rule, a "sale" occurs when an order is taken and/or payment is made.

(5) No member of the retail tier may take delivery of alcoholic beverages at a regional forwarding center.

(6) A regional forwarding center must be located in an area that is wet for the type of alcoholic beverages held therein.

(7) A licensee or permittee, by using a regional forwarding center under the authority of this rule, consents to inspection of such facility by the commission, its agents or employees, or any peace officer, to the same extent as consent is given for inspection of licensed premises by §101.04 of the Alcoholic Beverage Code.

(c) Licensees and permittees using regional forwarding centers under the authority of this rule shall maintain a record at the regional forwarding center with information relating to specific shipments entered into the record on the day the shipment is received or sent. The record shall show:

- (1) invoice number for each receipt and transfer;
- (2) date for each receipt and transfer;
- (3) point of origin for each receipt;
- (4) destination (name and address) for each transfer;
- (5) type of alcoholic beverages and total gallons for each receipt and transfer; and
- (6) name of the carrier making delivery and transfer, and its TABC permit number if one is required by the Alcoholic Beverage Code.

(d) Licensees and permittees using regional forwarding centers under the authority of this rule shall pay an annual fee of \$1,000 to the commission.

(e) All such records shall be kept for a period of four years.

Note: Rule Adopted: March 22, 1999; Effective: April 13, 1999

Note: Amended Rule Adopted: November 19, 2013; Effective: December 12, 2013

SUBCHAPTER B. PROHIBITED EQUIPMENT

§35.11 Bottle Capping Devices.

No member of the retail tier, including private club permittees, or of the wholesale tier, except for wine bottler permittees, of the alcoholic beverage industry may, for unlawful purposes, possess on the member's licensed premises a device used for capping or recapping of beverage bottles.

Note: Amendment Adopted: July 26, 1999; Effective: August 16, 1999

SUBCHAPTER C. MINORS

§35.21 Assist Defined.

The word "assist" as used in sections 106.09(a) and 61.71(a)(12) of the Alcoholic Beverage Code shall not be construed to mean that a person under 18 years of age assists in selling, handling, transporting, or dispensing alcoholic beverages merely by being employed to work on or about the premises where alcoholic beverages are sold, as long as he does not have a direct and immediate connection with any particular sale or delivery of such beverages.

SUBCHAPTER D. PLACE OR MANNER

§35.31 Offenses Against the General Welfare.

(a) This rule relates to §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) of the Alcoholic Beverage Code.

(b) A licensee or permittee violates the provisions of the Alcoholic Beverage Code cited in paragraph (a) of this rule if any of the offenses listed in paragraph (c) of this rule are committed:

(1) by the licensee or permittee in the course of conducting his/her alcoholic beverage business; or

(2) by any person on the licensee or permittee's licensed premises; and

(3) the licensee or permittee knew or, in the exercise of reasonable care, should have known of the offense or the likelihood of its occurrence and failed to take reasonable steps to prevent the offense.

(c) The offenses that are the subject of this rule are as follows:

(1) any preparatory offense described in Chapter 15 of the Texas Penal Code;

(2) any homicide offense described in Chapter 19 of the Texas Penal Code;

(3) any sexual offense described in Chapter 21 of the Texas Penal Code;

(4) any assaultive offense described in Chapter 22 of the Texas Penal Code;

(5) any arson, criminal mischief or property damage or destruction offense described in Chapter 28 of the Texas Penal Code;

(6) any theft offense described in Chapter 31 of the Texas Penal Code;

(7) any fraud offense described in Chapter 32 of the Texas Penal Code;

(8) any money laundering offense described in Chapter 34 of the Texas Penal Code;

(9) any bribery offense described in Chapter 36 of the Texas Penal Code;

(10) any obstruction offense described in Chapter 38 of the Texas Penal Code;

(11) any disorderly conduct or related offenses described in Chapter 42 of the Texas Penal Code;

(12) any public indecency offense described in Chapter 43 of the Texas Penal Code;

(13) any weapons offense described in Chapter 46 of the Texas Penal Code;

(14) any gambling offense described in Chapter 47 of the Texas Penal Code;

(15) any narcotics related offense described in Chapters 481 and 483 of the Texas Health and Safety Code;

(16) any law, regulation or ordinance of the federal government or of the county or municipality in which the licensed premises is located, violation of which is detrimental to the general welfare, health, peace and safety of the people.

(d) This rule does not constitute the exclusive means by which §§11.46(a)(8), 11.61(b)(7), 61.42(a)(3) and 61.71(a)(17) may be violated.

Note: Rule Adopted: July 26, 1999; Effective date: August 16, 1999

§35.32 Reporting a Breach of the Peace

(a) This section relates to Alcoholic Beverage Code §11.61(b)(21) and §61.71(a)(31).

(b) Except as provided in this subsection, a permittee or licensee shall report to the commission a breach of the peace on a licensed premises as soon as possible, but not later than five calendar days after the incident. If a shooting, stabbing or murder, or an incident involving

serious bodily injury, occurs on the licensed premises, the permittee or licensee shall report the breach of the peace not later than 24 hours from the time of the incident.

(c) Unless the report is required to be made in a specific manner pursuant to subsection (d) of this section, the report required by this section shall be made:

- (1) in person at any commission office;
- (2) by facsimile transmission to the appropriate commission office;
- (3) through the commission's website; or
- (4) by e-mail to "breachofpeace@tabc.texas.gov".

(d) The administrator or administrator's designee may require, in writing, that a permittee or licensee make any reports required by this section in a specific manner as instructed, if the permittee or licensee has previously violated Alcoholic Beverage Code §11.61(b)(21) or §61.71(a)(31).

(e) At a minimum, the report required by this section shall include the information required in paragraphs (1) - (9) of this subsection, but may include other information the person making the report wishes to include:

- (1) the date and time of the report;
- (2) the date and time of the incident being reported;
- (3) the trade name of the licensed premises where the incident occurred;
- (4) the name and physical location of the licensed premises where the incident occurred, including the city (if applicable) and county;
- (5) the name of the person filing the report, that person's relationship to the holder of the permit or license, and contact information for that person;
- (6) if different from the information given in response to paragraph (5) of this subsection, the name of the person designated by the holder of the permit or license to answer questions from the commission about the incident, that person's relationship to the permit or license holder, and contact information for that person;
- (7) a brief description of the incident;
- (8) the name of all law enforcement agencies who were called or otherwise appeared in connection with the incident, and the names of the officers involved (if known); and
- (9) the names and contact information of any witnesses to the incident (if known).

(f) For purposes of subsection (b) of this section and subject to the provisions of subsection

(g) of this section, a reportable "breach of the peace" occurs when law enforcement or emergency medical services personnel respond to the licensed premises, or when a disturbance is created on the licensed premises by a person:

- (1) shooting, stabbing or murdering a person;
- (2) causing bodily injury to another person;
- (3) threatening another person with a weapon;
- (4) discharging a firearm on the licensed premises; or
- (5) destroying the permittee's or licensee's property, if the incident is reported by the permittee or licensee to a law enforcement agency.

(g) For purposes of this section:

(1) conduct identified in subsection (f) of this section (other than a shooting, stabbing or murder, or an incident involving serious bodily injury) creates a "disturbance", and therefore is a reportable breach of the peace, when it:

(A) occurs at a time when the permittee or licensee, or any person allowed by the permittee or licensee, is on the licensed premises; and

- (B) interferes with, interrupts, or intrudes upon the operation or management of the licensed premises;
- (2) a shooting, stabbing or murder, or an incident involving serious bodily injury, on the licensed premises is always a "disturbance", and therefore is always a reportable breach of the peace;
- (3) a "licensed premises" is as defined in Alcoholic Beverage Code §11.49;
- (4) a "permittee" is as defined in Alcoholic Beverage Code §1.04(11); and
- (5) a "licensee" is as defined in Alcoholic Beverage Code §1.04(16).
- (h) A permittee or licensee may not be held administratively liable for failing to file a report or failing to file a timely report under this section if the permittee or licensee can demonstrate that he had no knowledge, nor in the exercise of reasonable care should have had knowledge, of the alleged breach of peace on the licensed premises.

Note: New Rule Adopted: July 26, 2011; Effective: August 21, 2011

SUBCHAPTER E. DEFINITIONS

§35.41 Terms Defined.

The following words and terms, when used in this chapter, shall have the following meanings, except when the context clearly indicates otherwise.

- (a) Lewd or vulgar entertainment or acts-any sexual offenses contained in the Texas Penal Code, Chapter 21 or any public indecency offenses contained in the Texas Penal Code, Chapter 43 (See Texas Alcoholic Beverage Code, §104.01(6)).
- (b) Narcotic-any substance defined in the Texas Controlled Substances Act, §481.002(5),(6),(7), or (26) (See Texas Alcoholic Beverage Code, §104.01(9)).

Note: Readopted Without Changes and Effective: May 28, 2015

CHAPTER 36. GUN REGULATION

§36.1 Possession and Sale of Firearms on Licensed Premises.

- (a) Gun Shows. A permittee/licensee may use or allow a portion of the grounds, buildings, vehicles and appurtenances of the licensed premises for the use of gun shows if the permittee/licensee:
 - (1) suspends all sales, complimentary offers and consumption of all alcoholic beverages during the gun show including time required for preparation or set-up and dismantling of the gun show; and
 - (2) operates its licensed premises at a facility regularly used for special functions, directly or indirectly, under a lease, concession or similar agreement from a governmental entity or legally formed and duly recognized civic, religious, charitable, fraternal or veterans organization.
- (b) Off-Premise Retailers and Gun Sales. The holder of a retail dealer's off-premise license, a wine and beer retail dealer's off-premise permit, a wine only package store or package store permit may allow the sale or offer for sale firearms at the licensed location if:

(1) alcoholic beverages are not being displayed or sold in any area where firearms are readily accessible or can be viewed; and

(2) the firearms are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.

(c) On-Premise Possession of Firearms. Firearms may be possessed on premises licensed for on-premise consumption if:

(1) the firearm is in the possession of the permittee/licensee; or

(2) the firearm is:

(A) possessed for ceremonial and/or display purposes;

(B) disabled from use as a firearm while on the licensed premises;

(C) is possessed on the licensed premises in connection with charitable

fundraising; and

(D) remains in the possession, control or supervision of person or persons acting on behalf of the charitable organization sponsoring the fundraising activity.

(d) Historical Reenactments. Pursuant to §11.61(i) of the Texas Alcoholic Beverage Code, a historical reenactment utilizing firearms maybe conducted on the premises of a permit or license if:

(1) the firearms are of the type, caliber, or gauge common to the era and event being reenacted;

(2) such firearms remain in the possession of members of the cast, production company, employees of the permit holder, or others directly involved in the reenactment and are not left unattended or accessible to unauthorized persons at all times such firearms are on the licensed premises;

(3) such firearms remain unloaded at all times while on the licensed premises except that the firearms may be loaded with blank ammunition firing no projectile;

(4) such firearms shall be handled in a safe manner so as to present no threat of injury to audience members or others because of discharge or other use;

(5) persons engaged in reenactments shall maintain a minimum of 15 feet intervals between those armed with pistols and all others, and 40 feet between those armed with shotguns and all others;

(6) the permittee shall adopt safety rules to be employed during the reenactment and such rules shall be read and signed by all employees of the permit holder involved in the reenactment prior to the beginning of the event; and

(7) the permittee provides the relevant Commission District Office or outpost notice of the reenactment at least three business days before the event.

Note: Amendment Adopted: July 28, 2009; Effective: August 26, 2009

CHAPTER 37. LEGAL

SUBCHAPTER A. RULES OF PRACTICE

§37.1 Payment for the Record on Appeal.

Note: Repeal Adopted: March 24, 2015; Effective Date: April 14, 2015

§37.2 Contested Case.

(a) This rule relates to any contested case under the Alcoholic Beverage Code (Code) where notice and hearing are required, or an opportunity for public participation is provided under the Code.

(b) All notices and pleadings in a contested case shall comply with the provisions of Texas Government Code, Chapter 2001, Subchapters C, D, and F and the rules of procedure adopted by the State Office of Administrative Hearings in Title 1, Texas Administrative Code, Chapter 155.

Note: New Rule Adopted: January 25, 2008; Effective Date: March 26, 2008

Note: Readopted Without Changes and Effective: May 28, 2015

§37.5 Determining Population.

For purposes of any provision of the Alcoholic Beverage Code or the commission's rules that refers to population, it shall be determined by the most recent federal decennial census.

Note: New Rule Adopted: October 24, 2005; Effective Date: November 17, 2005

Note: Amended Rule Adopted: May 28, 2015; Effective Date: June 18, 2015

SUBCHAPTER B. PENALTIES

§37.61 Suspensions.

(a) The administrator may deny a licensee or permittee the option of paying a civil fine in lieu of a suspension of the license or permit if the licensee or permittee has violated one or more of the following provisions of the Alcoholic Beverage Code:

- (1) §11.61(b)(14): sale to an intoxicated person by a permittee;
- (2) §22.12: breach of the peace on the premises of a package store;
- (3) §28.11: breach of the peace on the premises of a mixed beverage permittee;
- (4) §61.71(a)(5): sale to a minor by a licensee;
- (5) §61.71(a)(6): sale to an intoxicated person by a licensee;
- (6) §61.74(a)(14): sale to a minor by a licensee;
- (7) §69.13: breach of the peace on the premises of an on-premise retail beer dealer;
- (8) §71.09: breach of the peace on the premises of an off-premise retail beer dealer;
- (9) §101.63: sale to an intoxicated person;
- (10) §106.03: sale to a minor;
- (11) §106.06: purchase of alcohol for a minor;
- (12) or any offense relating to gambling or prostitution.

(b) In determining whether to deny a licensee or permittee the right to pay a civil penalty in lieu of a suspension, the administrator shall consider:

- (1) the type of permit or license held by the violating licensee or permittee and whether the sale of alcoholic beverages constitutes the primary or partial source of the licensee or permittee's business;
- (2) the type of violation or violations charged;
- (3) the licensee's or permittee's record of past violations; and
- (4) any aggravating or ameliorating circumstances.

- (c) Aggravating or ameliorating circumstances may include but are not limited to:
 - (1) whether the violation was caused by intentional or reckless conduct by the licensee or permittee;
 - (2) the number, kind and frequency of violations of the Alcoholic Beverage Code and rules of the commission committed by the licensee or permittee;
 - (3) whether the violation caused the serious bodily injury or death of another; and/or
 - (4) whether the character and nature of the licensee's or permittee's operation are reasonably calculated to avoid violations of the Alcoholic Beverage Code and rules of the commission.

CHAPTER 39. PORT OF ENTRY

§39.1 Tax Stamps.

- (a) The commission representative in charge of each port of entry shall be accountable to the commission on his bond for the value of all stamps delivered to him.
- (b) Funds received by the commission from the issuance of such stamps shall be deposited by the commission representative in charge at each respective port of entry in a bank or banks designated by the administrator and shall be electronically transferred to the State Treasury by the commission.
- (c) It shall be unlawful for any person to affix a state tax stamp to any alcoholic beverage container unless such stamp as indicated by its class corresponds with the type of beverage in such container.
- (d) Any alcoholic beverage to which a stamp of a different class has been affixed shall be deemed an illicit beverage and subject to confiscation.

CHAPTER 41. AUDITING

SUBCHAPTER A. SALES

§41.1 Sale to Lien Holders.

- (a) All alcoholic beverages are subject to levy and other judicial process the same as any other personal property under the general laws of the state.
- (b) Sale thereof may be to lien holders and to permittees and licensees who are privileged to purchase and sell the same.
- (c) In all instances after such sale has been made the person making such a sale shall notify the administrator at Austin, giving the date of sale, the names and address of both the original owner and the purchaser, an inventory of the beverages sold and the name of the lien holder or lien holders. A lien holder who is not a licensee or permittee and who purchases the same or who procures title thereto in any other lawful manner, shall dispose of such alcoholic beverages within 30 days after acquiring title thereto, provided however, that the administrator may grant an additional time for good cause shown.
- (d) As a condition precedent to making such resale the lien holder shall apply to the administrator for permission to make such sale. The application shall show the name and

address of the intended purchaser, the number of his license or permit, the amount of beverages and kind to be sold and date and manner in which he procured title thereto.

§41.2 Sale by Carrier.

(a) Any person authorized to transport the same may sell, in accordance with law, any alcoholic beverage which he acquires by reason of unpaid charges, to any permittee or licensee who is privileged to import and sell such alcoholic beverage.

(b) Any person contemplating such sale, shall first make application to the administrator at Austin, setting out the facts regarding such shipment, the names and addresses of the consignor and consignee, the name and address of the proposed purchaser, and the amount of the charges due.

(c) No person shall sell or offer for sale any alcoholic beverages for unpaid charges except in the manner herein provided.

§41.3 Sale after Cancellation or Expiration of License or Permit.

(a) In the event any permit or license granted under the code is cancelled, the permittee or licensee is authorized within 30 days thereafter to sell or dispose of in bulk to a permittee or licensee authorized to purchase and sell same the remainder of stock of alcoholic beverages on hand at the time of the cancellation.

(b) If a necessity exists for a longer period, written permission must be procured from the administrator. The application for such permission shall specify the reasons.

(c) No sale or disposition of liquor or beer may be made by either a permittee or licensee after the date on which the permit or license expires by reason of its own terms unless written permission is procured from the administrator.

(d) In all cases where alcoholic beverages are disposed of or sold in bulk as herein set out, a sworn inventory signed and acknowledged by both the seller and the purchaser shall be mailed to the administrator at Austin, Texas.

(e) No person shall dispose of any alcoholic beverages after the expiration or termination of a permit or license except in the manner and within the time as herein specified.

§41.4 Mixed Beverage Permittee -- Voluntary Cancellation.

(a) A holder of a mixed beverage permit who desires to discontinue business may dispose of his inventory on hand in the following manner:

(1) The permit shall be submitted to the commission for cancellation.

(2) A bill of sale shall be prepared showing the complete inventory of alcoholic beverages on hand. The inventory shall show the brand and size of each container of alcoholic beverages and the identification stamp number affixed to each container of distilled spirits.

(3) The selling mixed beverage permit holder shall obtain permission to make the sale to another permit holder from the district supervisor of the commission in the district where the selling permittee is located.

(4) Both the selling permittee and the purchasing permittee shall sign the bill of sale under oath before a notary public swearing to the correctness of the sales transaction. A copy of the bill of sale must be submitted to the district office of the commission.

(5) All alcoholic beverages shall be sold in one single sale to a holder of a mixed beverage permit.

(b) A holder of a mixed beverage permit who holds more than one such permit and who submits one of his permits to the commission for cancellation and desires to transfer the alcoholic beverages on hand at the place covered by the permit sought to be cancelled shall do the following:

(1) Notify the district supervisor of the commission in the district where each permit is located and obtain approval.

(2) Submit the proper permit to the commission for cancellation.

(3) Prepare and submit a complete inventory of alcoholic beverages on hand showing the brand and size of container of each alcoholic beverage and the identification stamp number affixed to each container of distilled spirits.

(4) Sign the inventory under oath before a notary public swearing to the correctness of the facts stated therein. A copy of the inventory shall be submitted to the district office of the commission.

SUBCHAPTER B. EXPORTS OF LIQUOR

§41.11 Records in General.

(a) Permittees authorized to export distilled spirits and wines shall make a sworn application in triplicate for permission for each export shipment of distilled spirits or wine on such forms as may be prescribed by the administrator and shall give all information required by such form and shall present all three copies to a representative of the commission in the district where located. The applicant shall attach to such application an order signed by the purchaser of the distilled spirits or wines or in case of return to a distillery or manufacturer a letter of authority.

(b) The representative of the commission will immediately inspect such shipment intended for export, checking the same with the information in the application. If such shipment is in conformity with every requirement, the distilled spirits or wines may then be delivered to a common carrier, holding a carrier's permit, or if the applicant is the holder of a private carrier permit, such distilled spirits or wines may be transported and exported upon vehicles described in the application of such private carrier permit. Only common carriers holding a carrier permit and holders of a private carrier permit are privileged to transport for export distilled spirits and wines.

(c) If an export shipment of distilled spirits or wines is transported upon vehicles under a private carrier permit, the permittee must also obtain verification of the receipt of the merchandise from the state liquor authority in the state where the shipment is received. Verifications of this type must be kept on file by the permittee for inspection by any representative of the commission.

(d) After the inspection of such export shipment by the commission's representative, he shall approve all three copies of the application. The applicant shall retain one copy and send the original and one copy to the office of the commission at Austin, Texas, as an attachment to his monthly report of distilled spirits and wines received and disposed of. To the original he shall attach a copy of the invoice covering the shipment to the consignee and a copy of the bill of lading furnished by the carrier permittee, or a copy of the invoice furnished by the private carrier permittee.

(e) No person shall export any distilled spirits or wines in any manner other than as herein specified.

SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

§41.20 Timely Filing of Reports.

With respect to all tax reports required under the Texas Alcoholic Beverage Code, Chapter 201, or this chapter, a person filing a report or making a tax payment complies with the filing requirements for timeliness for a report not filed or a payment not made on time if the person exercised reasonable diligence to comply with the filing requirements and the failure to file or the making of a late payment is not the fault of the person.

§41.21 Industrial Permits.

(a) *Purchase and sale.*

(1) Holders of industrial permits may purchase or otherwise acquire wine and vinous liquor in containers of not less than one gallon without payment of state tax from the holders of permits in Texas, authorizing the manufacture or importation of wines, subject to restrictions herein provided and conditioned that such wine and vinous liquor shall be used for no purpose other than the compounding or manufacture of medicines and food products.

(2) Holders of class A winery permits, class B winery permits, wholesaler's permits, class B wholesaler's permits and wine bottler's permits may sell to the holders of industrial permits wine and vinous liquor in containers of not less than one gallon without payment of state tax and subject to restrictions herein provided.

(b) *Report-receiving.*

(1) Each holder of an industrial permit shall make a monthly report to the commission on a form prescribed by the administrator (Industrial Receiving Record Wine).

(2) The report shall be made and filed by the permittee with the commission at its office in Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show the following:

- (A) A full and complete record of all wine and vinous liquors received or possessed.
 - (B) The date received.
 - (C) From whom received.
 - (D) Point of origin of the shipment.
 - (E) Date of invoice.
 - (F) Seller's invoice number.
 - (G) Total number and size of containers received.
 - (H) The total amount in wine gallons of wine containing not more than 14% alcohol by volume.
 - (I) The same information in regard to wine received containing over 14% alcohol by volume and not more than 24% of alcohol by volume.
 - (J) The name of the carrier making delivery.
- (3) Entries shall be made on this report within 24 hours after the date any wine is received or becomes the property of the permittee at any point within the State of Texas.

(4) The permittee shall give all information required to be reported on the prescribed form and the report shall be signed and sworn to by the permittee or his duly authorized representative before a notary public or other officer authorized to administer oaths.

(c) *Report-manufacturing.*

(1) Each holder of an industrial permit shall make a monthly report to the commission on a form prescribed by the administrator (Industrial Manufacturing Report).

(2) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

(A) a full and complete record of all wine and vinous liquor received and used in the compounding or manufacture of medicines or food products during the month for which such report is made;

(B) the date of each day's operation;

(C) the opening inventory in wine gallons;

(D) receipts in wine gallons;

(E) wine gallons used in the compounding or manufacture of medicines or food products;

(F) closing inventory in wine gallons;

(G) total packages of resultant products, stating number and size of packages, that is, in case of bottles, fluid content; in case of packages, ounces or pounds and ounces;

(H) name of product manufactured; and

(I) the same information to be reported separately on wines in each tax classification.

(3) On the closing day of the month for which the report is made an actual physical inventory shall be made of all wine on hand and results posted on the form directly below the figures shown on the closing day of the month, all wine to be considered as wine on hand until the product is packaged.

(4) Entries shall be made on this report within 48 hours after the date that any such wines are received or packaged.

(5) The permittee shall give all information required to be reported on the form and the report shall be signed and sworn to by the permittee or his duly authorized representative before a notary public or other officer authorized to administer oaths.

(d) *Report not required.* Holders of industrial permits who do not purchase or handle wine or vinous liquors in any way shall not be required to make the reports herein required.

§41.23 Basic General Records Required.

(a) It shall be unlawful for any brewer, distiller, winery, rectifier, wholesaler, Class B wholesaler, package store, industrial permittee, wine bottler, beer manufacturer, or beer distributor to fail or refuse to keep at each place of business, for a period of two years, for the inspection at all times of the commission or its authorized representatives, a complete record of all alcoholic beverages manufactured, distilled, sold, purchased, received, blended or bottled, including all invoices, bills of lading, way bills, freight bills, express receipts, and all other shipping records furnished by the carrier and the seller or shipper of said alcoholic beverages; and in addition thereto, a book record in a well bound book which will provide complete information of all alcoholic beverages manufactured, purchased, or received, the name and address of the person from who purchased and from who received, the point from which shipped

or delivered, the point at which received, the quantity and kind of beverage received, and inventories on the last day of each month, showing the quantity and kind of beverage on hand. The inventories herein required shall not apply to package store permittees. Wine and beer retailers other than for railroad cars shall be required to keep the records only as to wine purchases.

(b) It shall be unlawful for any brewer, distiller, winery, rectifier, wholesaler, Class B wholesaler, wine bottler, beer manufacturer, or beer distributor, to fail or refuse to keep at each place of business, for a period of two years for the inspection at all times of the commission or its authorized representatives, a complete record of each and every sale or distribution of alcoholic beverages, upon an invoice to be furnished by said permittee or licensee, which invoice shall be issued in consecutive numbered order. Said invoice shall show the date of sale or distribution, the purchaser and his address, the means of delivery, the name of the carrier, if delivered by common carrier, the quantity, price, container size and brand name of alcoholic beverage sold and in addition thereto the said invoice shall be supported by the receipts or other records furnished by the carrier of such alcoholic beverage. Alcohol percentage by volume or an approved symbol or statement must be included in the product description for malt beverages containing more than four percent alcohol by weight. Such invoice or a copy thereof shall be delivered to the purchaser and a copy shall be kept by the permittee or licensee making the sale. Invoices must be printed and numbered and issued in consecutive numbered order, and the copies thereof shall be kept for a period of at least two years.

(c) Each purchaser of tax free alcohol shall keep for inspection of the commission or its authorized representatives all invoices of such purchases for a period of at least two years.

Note: Amendment Adopted: July 24, 2012; Effective Date: August 26, 2012

§41.24 Liquor Prescriptions--Physician's Permits.

Note: Repeal Adopted: March 24, 2015; Effective Date: April 14, 2015

§41.25 Records To Be Kept Separate.

(a) It shall be unlawful for any permittee or licensee to issue or receive an invoice for any alcoholic beverage wherein an invoice is required by law or by a rule of the commission unless the same bears the exact trade name of the issuing permittee or licensee and the receiving permittee or licensee, if any.

(b) It shall be unlawful for any person who owns more than one business operating under separate permits or licenses or a single business operating at two or more locations under separate permits or licenses to fail to keep separate records for each such business or place of business.

(c) Each permittee and licensee who is also engaged in any other kind of business shall make and keep all records required by the Alcoholic Beverage Code or by rule for his alcoholic beverage business separate and apart from any and all other records.

(d) All such records shall be kept for a period of at least two years, and shall be kept open for inspection by the commission or its authorized representatives during reasonable office hours.

(e) If any false entry or alteration whatever is made in said records, same shall be a violation of this section.

§41.26 Railway Cars--Tax Returns.

Each operator of railway buffet, club or dining cars in Texas shall within 20 days after the close of each calendar month file with the commission at Austin, Texas, a sworn report of the amount of wine and beer sold in Texas during such period for which the state excise tax upon such wine and beer is due, and shall attach thereto payment of the full amount due.

§41.27 Tax Credit--Wine Processing.

(a) A holder of a wine bottler's or winery permit who possesses wine on which the state excise tax has been paid and which is to be refiltered, reconditioned, or destroyed and who desires to be reimbursed for the state tax may notify the district supervisor of the commission. The district supervisor shall assign one or more inspectors to make an inventory of the amount of wine to be reconditioned, refiltered, or destroyed.

(b) The inventory report shall be executed in quadruplicate on a form furnished by the commission. Such form shall show: date; number and size of containers; trade name of permittee; permit number; class of permit; address and amount of tax paid on such wine. The report shall be signed and sworn to before a notary public or other officer authorized to administer oaths by the said permittee or his authorized representative. The *de facto* original and two other originals shall be sent by the inspector to the administrator and the fourth original given the permittee and retained by him in his permanent file for a period of two years.

(c) The inventory shall be construed to be a request by the permittee for tax credit. If the administrator approves the request, he shall notify the permittee in writing. After receiving such written notice, the permittee may, on his next succeeding payment of the state excise tax on wine, deduct from his remittance any tax credit then existing on the account. If the administrator refuses the request in whole or in part he shall notify the permittee in writing and shall state therein the reason therefor.

(d) No holder of a wine bottler's permit shall bottle any wine other than that which is owned by him. No holder of a class A or class B winery permit shall bottle any wine other than that which is manufactured or blended by such permittee.

(e) It shall be unlawful for any holder of a wine bottler's permit or winery permit to bottle or rebottle wine from a container of less than five gallons.

(f) It shall be unlawful for the holder of a wine bottler's permit or winery permit, or any agent, servant or employee to have in his possession any wine, in containers of less than five gallons except for the purpose of lawful sale.

§41.28 Sale and Delivery of Beer to Retail Premises and Private Clubs.

(a) Beer intended to be delivered in sales transactions consummated at a licensed retailer's place of business or at a private club located in a wet area may be transported through dry areas or through any incorporated city or town or any part thereof wherein the manufacture, storage, sale, delivery, or transportation of liquor or beer is prohibited by charter or ordinance upon vehicles owned and operated in such transportation by a licensed manufacturer or distributor; provided, however, that this shall apply only to the transportation of beer from one wet area for sale and delivery in another wet area; and provided further that the person directly in charge of the vehicle used in such transportation shall have in his possession a written statement furnished and signed by the shipper that such beer is delivered into the charge of said person, the quantity

of beer so delivered to such person, the origin thereof, and the fact that said beer is intended for delivery only upon any sale that may be consummated by such person acting as agent for the shipper at the place of business of a licensed retail dealer or a private club located in a wet area.

(b) It shall be unlawful for any person into whose charge beer is delivered as herein provided to sell or deliver any such beer or consummate any sale of beer except to a licensed retailer at his place of business or to a private club located in a wet area. All such sales shall be recorded on sales tickets indicating the purchaser, quantity and price. A copy of such sales ticket shall be furnished the purchaser at the time of sale and a copy shall be furnished to the shipper of such beer within 24 hours from the time of its delivery.

(c) It shall be unlawful for any person into whose charge beer is delivered as herein provided to make any false report of a delivery or to fail to have in his possession all beer so delivered to him or in lieu thereof the proper sales tickets herein required for any such beer that is not in his possession, or to fail to exhibit his records pertaining to any such shipment upon the demand of any representative of the commission or any peace officer.

(d) It shall be unlawful for any manufacturer or distributor to fail to require of each person into whose charge beer is delivered, as herein provided for redelivery in sales transactions consummated at the place of business of a licensed retailer or private club located in a wet area, to account for any beer so delivered by him within 24 hours after any such delivery is made; or to fail to require said person to deliver to said manufacturer or distributor a proper sales ticket as herein required covering each sale and delivery of beer made by such person; or to fail to make and keep a record of each such sale of beer in the manner required in sections 62.05 or 64.04 of the Alcoholic Beverage Code.

§41.29 Bonded Warehouse Breakage.

(a) No holder of a bonded warehouse permit shall store or offer to store any liquor unless the same be in full and unbroken case lots.

(b) No holder of a bonded warehouse permit shall permit the withdrawal of any liquor unless the same be in full and unbroken case lots; provided, however, that where actual breakage occurs in a bonded warehouse which results in actual loss, the holder of a bonded warehouse permit shall allow such withdrawal when affidavits in duplicate are made by the holder of the bonded warehouse permit showing actual breakage in a case or cases.

(c) One such affidavit shall be kept on file by the holder of the bonded warehouse permit and be subject to inspection by the representative of the commission, and the other affidavit shall be attached to his daily report (Warehouse Report) forwarded to the Austin office of the commission.

§41.30 Sale and Delivery of Ale to Retail Premises.

(a) It shall be lawful for the holder of a wholesaler's permit or class B wholesaler's permit who is also the holder of a private carrier's permit to transport and sell ale to holders of package store permits, wine only package store permits, wine and beer retailer's permits, and mixed beverage permits without obtaining previous orders from such retailers; provided, however, that no invoice shall be required for the transportation of ale unless in the course of such transportation it is necessary to cross territory in which the manufacture, sale and distribution of ale is prohibited.

(b) Ale intended to be delivered in sales transactions consummated at a licensed retailer's place of business may be transported through dry areas or through any incorporated city or town or any part thereof wherein the manufacture, storage, sale, delivery, or transportation of ale is prohibited by charter or ordinance upon vehicles owned and operated in such transportation by the holder of a wholesaler's permit or class B wholesaler's permit who is the holder of a private carrier's permit; provided, however, that this shall apply only in the transportation of ale from one wet area for sale and delivery in another wet area; and provided further that such person directly in charge of the vehicle used in such transportation shall have in his possession a written statement furnished and signed by the shipper showing that such ale is delivered into the charge of said person, the quantity of ale so delivered to such person, the origin thereof, and the fact that said ale is intended for delivery only upon any sale that may be consummated by such person acting as agent for the shipper at the place of business of a licensed retail dealer.

(c) It shall be unlawful for any person into whose charge ale is delivered as herein provided to sell or deliver any such ale upon any sale consummated at the retailer's place of business without then and there obtaining a signed receipt for such ale redelivered by him, showing the quantity thereof, the price at which the same is sold, and whether such sale is made upon cash or credit terms; or to fail to make report to the shipper of such ale within 24 hours from the time of its delivery, or to make any false report of such delivery.

(d) It shall be unlawful for any person into whose charge ale is delivered as herein provided to fail to have in his possession all ale so delivered to him or in lieu thereof the receipts herein required for any such ale that is not in his possession, or to fail to exhibit his records pertaining to any such shipment upon the demand of any representative of the commission or any peace officer.

(e) It shall be unlawful for the holder of a wholesaler's permit or class B wholesaler's permit to fail to require of each person into whose charge ale is delivered, as herein provided for redelivery in sales transactions consummated at the place of business of a licensed retailer, to account for any ale so delivered by him within 24 hours after any such delivery is made; or to fail to require said person to deliver to said wholesaler or class B wholesaler a receipt as herein required covering each sale and delivery of ale made by such person; or to fail to make and keep a record of every such sale of ale in the manner required in §206.01 of the Alcoholic Beverage Code.

§41.31 Tax.

Holders of permits authorizing the importation of distilled spirits and wines into this state must pay the tax assessed on distilled spirits and wines not later than the 15th day of the month following the month in which occurs the "first sale" as this term is defined in §201.02 of the Alcoholic Beverage Code. Holders of permits authorizing the manufacturing in this state or importation into this state of ale and malt liquor must pay the tax assessed on ale and malt liquor not later than the 15th day of the month following the month in which occurs the first sale or importation into this state of ale and malt liquor must pay the tax assessed on ale and malt liquor not later than the 15th day of the month following the month in which occurs the first sale or importation as set forth in §201.41, *et seq.*, of the Alcoholic Beverage Code. Remittance of the taxes on liquor, less 2.0% of the amount due when submitted within the required time, shall accompany the reports hereinafter provided for in sections 2, 4, and 6 of this rule. Remittance of all taxes shall be made by cashier's check, certified check, or United States postal money order, payable to the State Treasurer of Texas.

§41.32 Monthly Report of Distilled Spirits and Wines.

(a) Each holder of a distiller's, rectifier's, wholesaler's, general and local class B wholesaler's, class A and B winery, or wine bottler's permit shall make a monthly report (Monthly Report of Distilled Spirits and Wines Received and Disposed Of) to the commission on forms prescribed by the administrator.

(b) The report shall be made and filed by the permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show the following:

(1) Month for which the report is made, permit number, class of permit, trade name and address of permittee.

(2) Wine gallons of distilled spirits, wine not over 14% alcohol by volume, wine 14-24% alcohol by volume, and wine sparkling along with the invoice dates, names and addresses of the consignees, invoice numbers and total cases for sales to Texas wholesalers, exports out-of-state, and sales to ships for ship's supplies.

(3) Wine gallons of distilled spirits, wine not over 14% alcohol by volume, wine 14-24% alcohol by volume, and wine sparkling along with the receiving dates, shippers' names and addresses, invoice numbers and total cases when distilled spirits and wines are destroyed by railroads and common carrier truck lines and when an exemption for the tax is claimed.

(4) Wine gallons of wine not over 14% alcohol by volume, wine 14-24% alcohol by volume, and wine sparkling along with the invoice dates, consignees' names and addresses, invoice numbers and total cases for exemptions for the tax for sales of wines to religious organizations for sacramental purposes.

(5) The total wine gallons of distilled spirits, wine not over 14% alcohol by volume, wine 14-24% alcohol by volume and wine sparkling that are during the month:

(A) owed in this state by, in the possession in this state of, the permittee on the first and last day;

(B) received;

(C) disposed of in a transaction exempt from tax;

(D) returned under authorization of the administrator; and

(E) subject to tax.

§41.33 Receiving Record of Distilled Spirits and Wines.

(a) Each holder of a rectifier's, wholesaler's, general and local class B wholesaler's, class A and B winery, or wine bottler's permit shall make a monthly report (Receiving Record of Distilled Spirits and Wines) to the commission on forms prescribed by the administrator.

(b) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

(1) distilled spirits and wines produced and received by the permittee during the month;

(2) the dates received;

(3) from whom received;

(4) point of origin of each shipment;

(5) invoice dates and invoice numbers of each shipment;

- (6) total number of cases in each shipment;
 - (7) the amount of wine gallons received for distilled spirits, wine not over 14% alcohol by volume, wine 14-24% alcohol by volume and wine sparkling; and
 - (8) the name of the carrier making delivery, freight bill number and car initials and number of each shipment received.
- (c) Entries shall be made on this report within 24 hours after the day any such distilled spirits and wines are received or become the property of the permittee at any point within the State of Texas.

§41.34 Distilled Spirits Report of Miniatures.

- (a) Each holder of a distiller's, rectifier's or wholesaler's permit shall make a monthly report (Distilled Spirits Report of Miniatures) to the commission on forms prescribed by the administrator.
- (b) The report shall be made and filed by the permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show the following:
- (1) Month for which the report is made, trade name and address of permittee, and permit number.
 - (2) Number of miniatures in inventory, beginning of month.
 - (3) Receipts of miniatures showing invoice number, total cases, number of miniatures, and total of miniatures received.
 - (4) Exemptions for end of month inventory, sales to Texas wholesaler, exports out-of-state, common carrier claims and breakage, and other allowable exemptions.
 - (5) Number of miniatures subject to tax and the taxes due.

§41.35 Daily Bottling Report.

- (a) Each holder of a rectifier's, class A and class B winery or wine bottler's permit, or any person engaged in the bottling of wine, in addition to all other reports required, shall make a monthly report (Daily Bottling Report) to the commission on forms prescribed by the administrator.
- (b) The report shall be made and filed by the permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:
- (1) a full and complete report of all wines received and bottled during the month for which the report is made;
 - (2) the date of each day's operation;
 - (3) for each day's operation, the opening inventory in bulk wine gallons;
 - (4) receipts in bulk wine gallons;
 - (5) bulk wine gallons used in bottling;
 - (6) closing inventory in bulk wine gallons;
 - (7) total cases bottled, stating number and size of units, that is, tenths, pints, *etc.*;
 - (8) total wine gallons bottled;
 - (9) total taxable gallons bottled; and
 - (10) the same information reported separately on wines in each tax classification.

(c) On the closing day of the month for which the report is made, an actual physical inventory shall be made of all bulk wine and the results posted on the designated form below the figure shown on the closing day of the month.

(d) Entries shall be made on this report within 48 hours after the day that any such wines are received or bottled.

(e) Every person holding a wine bottler's permit must submit a sworn inventory of all empty glass on hand at the end of the month and also an affidavit showing the quantity and sizes of all empty glass received during that month. These must accompany other reports required to be sent to the commission not later than the 15th of the month following.

(f) Each winery shall maintain a record of the wine manufactured and labeled for individuals. This record shall include date of manufacture, adults name, sample label and total gallons manufactured for each adult. Each record shall be made available to a representative of the commission upon request.

§41.36 Monthly Report of Ale and Malt Liquor.

(a) Each holder of a brewer's, wholesaler's, general class B wholesaler's or local class B wholesaler's permit shall make a monthly report (Monthly Report of Ale and Malt Liquor Manufactured, Imported, Purchased, and Disposed Of) to the commission on forms prescribed by the administrator.

(b) The report shall be made and filed by the permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

- (1) the month for which the report is filed;
- (2) the class of permit and permit number;
- (3) the county in which the permit is issued;
- (4) the name of the permittee and his address;
- (5) the mailing address of the permittee;
- (6) by brands, the quantity and units of ale and malt liquor sold that are manufactured in Texas;
- (7) amounts of ale and malt liquor imported from nonresident brewers and nonresident sellers during the month, showing invoice dates, invoice numbers, names and addresses of sellers, quantities by units, names of delivering carriers, freight bill numbers and car initials and numbers;
- (8) sales aboard ships, showing quantities by units and to whom sold;
- (9) sales shipped out-of-state, showing quantities by units and to whom sold;
- (10) only with proper verification, tax exemptions of common carrier claims showing quantities by units;
- (11) consumption of tax due on taxable units;
- (12) purchases of ale and malt liquor from Texas brewers and wholesalers showing invoice dates, names and addresses of shippers, brands, and quantities by units; and
- (13) inventories at end of month.

§41.37 Industrial Alcohol Report.

(a) Each holder of an industrial permit as provided in §38.01 *et seq.*, of the Alcoholic Beverage Code shall make a monthly report (Industrial Alcohol Report) to the commission on forms prescribed by the administrator.

(b) The report shall be made and filed by the permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

- (1) a full and complete record of all alcohol, except denatured alcohol produced and received by the permittee during the month for which the report is made;
- (2) the date the alcohol was received;
- (3) the date and number of the invoice;
- (4) from whom the alcohol was received;
- (5) point of origin of shipment;
- (6) the quantity of alcohol received in wine gallons;
- (7) total wine gallons of alcohol on hand the first of month;
- (8) total wine gallons of alcohol purchased during the month;
- (9) total wine gallons of alcohol produced during the month;
- (10) total wine gallons of alcohol unaccounted for;
- (11) total wine gallons of alcohol to account for;
- (12) total wine gallons of alcohol used during the month;
- (13) total wine gallons of alcohol shipped during the month;
- (14) total wine gallons on hand at end of the month;
- (15) total wine gallons of alcohol unaccounted for; and
- (16) total wine gallons of alcohol accounted for.

§41.38 Carrier Report.

(a) Each holder of a carrier's permit as provided in §41.04 *et seq.*, of the Alcoholic Beverage Code shall make a monthly report (Carrier Report) to the commission on forms prescribed by the administrator. The report shall be made and filed by the permittee with the commission at its offices at Austin, Texas on or before the 15th day of the month following the calendar month for which the report is made. The report shall give an accurate account of all liquor, wine, ale, and beer transported by the carrier in interstate commerce during the month for which the report is made, and shall state the date of shipment, consignor, point of origin, consignee, destination, freight bill number, number of packages, car number and initials, kind of commodity shipped, and the date of delivery, and shall give all information requested by the form. If no interstate shipments were transported, a report shall be made stating such fact.

(b) This section shall not apply when in the transportation of an interstate or foreign shipment of liquor, wine, ale, or beer it is necessary to cross this state.

§41.39 Warehouse Report.

(a) Each holder of a bonded warehouse permit shall make a daily report (Warehouse Report) to the commission on forms prescribed by the administrator.

(b) The report shall be made and filed by the permittee with the commission at its offices at Austin, Texas, within 24 hours after the receipt of withdrawal of any liquor; provided that no

report shall be required for any calendar day during which no liquor is received into or withdrawn from such bonded warehouse. The report shall show:

- (1) the name, address, and permit number of the warehouse;
- (2) name, address, storage permit number, and class of permit of customer;
- (3) units in case lots;
- (4) daily opening inventory receipts, withdrawals and closing inventory, supported by itemized receiving tallies and itemized release orders; and
- (5) the same information for liquor, wines 14% alcohol by volume and under, wines over 14% alcohol by volume and not more than 24% alcohol by volume, wines natural and carbonated and malt liquor.

(c) Such reports shall be signed by the custodian of the bonded warehouse and filed with the commission daily.

(d) The report for the closing day of each calendar month shall reflect the exact physical inventory of liquor in storage for each permittee and shall be sworn to and acknowledged. A separate report shall be made for each permittee who stores merchandise in the bonded warehouse.

(e) Entries on this report shall be made on the date that merchandise is received or withdrawn and shall be kept up to date so that it can be checked by any authorized representatives of the commission at any time during reasonable office hours.

§41.40 Monthly Report of Medicinal Pharmacy.

Note: Repeal adopted: March 24, 2015; Effective Date: April 14, 2015

§41.41 Nonresident Seller's Report.

(a) Each holder of a nonresident seller's permit shall make a monthly report (Nonresident Seller's Report) to the commission on forms prescribed by the administrator.

(b) The report shall be made and forwarded by the permittee to the commission at Austin, Texas, postmarked not later than the 15th day of the month following the calendar month for which the report is submitted. The report shall show:

- (1) the month of the report;
- (2) invoice date and shipping date;
- (3) invoice number;
- (4) the person and address to whom sold and shipped;
- (5) the brand, type, number of containers and size of containers in each case shipped;
- (6) total cases;
- (7) selling price of each item and total selling price;
- (8) origin of shipment; and
- (9) total wine gallons of each class of liquors shipped on each invoice.

(c) As long as a nonresident seller's permit remains active, the monthly report required herein must be filed each month even though no sales or shipments have been made.

§41.42 Amount of Excise Tax Bonds.

(a) Excise tax bonds required by Chapter 204 of the Alcoholic Beverage Code and by §33.22 of this title of license or permit holders authorized to import beer or liquor into this state

shall be in a minimum amount of \$1,000 and the maximum amounts of the bonds shall be determined by the administrator. The maximum bond fixed by the administrator shall be an amount that will adequately protect the State of Texas against the anticipated tax liability of the principal during any six week period.

(b) The administrator as he deems necessary shall cause an investigation to be made of the adequacy of any bond and shall make adjustments as he deems justified.

Note: Amendment Adopted: October 22, 2012; Effective: November 15, 2012

§41.43 Authorization.

Each report required by this section shall be signed and sworn to by the permittee or licensee or his duly authorized representative before a notary public, or other officer authorized to administer oaths.

§41.44 Copy.

An exact copy of each report required by this section shall be retained in the files of the permittee or licensee and shall be kept by said permittee or licensee for a period of at least two years, subject to inspection of the commission or its authorized representative at all reasonable office hours.

§41.45 Violation.

It shall be a violation of this section to fail or refuse to make any record or report herein required, or for any person to make or cause to be made any false or incorrect entry or entries on any record or report herein provided for. It shall further be in violation of this section to fail to make any entry or entries on any record provided by this section at the time or in the place or manner herein required.

§41.46. Beer--In General.

(a) *Tax.* Holders of distributor's and importer's licenses must pay the tax on beer imported by them not later than the 15th day of the month following the month in which the importation of beer was made. Holders of manufacturer's licenses must pay the tax assessed on beer sold by them not later than the 15th day of the month following the month in which sales are made. Remittance of the tax due on beer, less 2.0% of the amount due when submitted within the required time, shall accompany the manufacturer's and distributor's reports hereinafter provided for and shall be made by cashier's check, certified check or United States postal money order payable to the state treasurer of Texas.

(b) *Distributor's monthly report.*

(1) Each holder of a general distributor's license, branch distributor's license, or local distributor's license shall make a monthly report (Distributor's Monthly Report) to the commission on forms prescribed by the administrator.

(2) The holder of more than one license, or the holder of a general distributor's license and a branch license, shall make a separate report of the business conducted under each license so held.

(3) The report shall be made and filed by the licensee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

- (A) the number of the license under which the business is conducted, the class of license and the county for which issued, and importer's license number, if any;
- (B) the name of the distributor and his address;
- (C) the brands of beer sold and the counties in which sales are made;
- (D) the amount of beer purchased from Texas manufacturers or distributors during the month, showing invoice dates and names and addresses of sellers and the quantity by units, such as barrels, half-barrels, cases and cartons;
- (E) the amount of beer purchased from out of state during the month, showing invoice dates and names and addresses of sellers, and the quantity by units;
- (F) total sales into military installations during the month, showing invoice dates and names and addresses of purchasers;
- (G) total sales outside Texas during the month, showing invoice dates and names and addresses of purchasers;
- (H) total beer destroyed by railroads and common carrier truck lines when allowance for tax is claimed;
- (I) computation showing total taxable beer and amount of tax due; and
- (J) inventories at the end of the month.

(c) *Manufacturer's report.*

(1) Each holder of a manufacturer's license, shall make a monthly report (Manufacturer's Report) to the commission on forms prescribed by the administrator.

(2) The report shall be made and filed by licensee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

- (A) the month for which the report is made, the license number and the name and address of the manufacturer;
- (B) the brands of beer sold;
- (C) total sales during month direct to military establishments;
- (D) total sales to purchasers located outside of Texas;
- (E) total sales of taxable beer; and
- (F) computation of total taxes due on taxable sales.

(d) *Monthly report of nonresident manufacturer.*

(1) Each holder of a nonresident manufacturer's license shall make a monthly report (Monthly Report of Nonresident Manufacturer) to the commission on forms prescribed by the administrator.

(2) The report shall be made and filed by each nonresident manufacturer with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

- (A) the month for which the report is made;
- (B) name and address of the licensee;
- (C) license number;
- (D) total barrels of beer shipped into Texas for the month; and

(E) names and addresses of consignees along with the invoice dates, brands of beer shipped, and quantity by units of beer shipped such as barrels, half-barrels, cases and cartons.

(e) *Carrier's report.*

(1) Each holder of an importer's carrier's license shall make a monthly report (Carrier's Report) to the commission on forms prescribed by the administrator.

(2) The report shall be filed with the commission at its offices at Austin, Texas, on or before the 15th of the month following the calendar month for which the report is made, of all beer transported by them from origins outside this state to authorized license holders within this state. The report shall show:

- (A) date of shipment;
- (B) consignor;
- (C) point of origin;
- (D) consignee;
- (E) destination;
- (F) freight bill number;
- (G) number of packages;
- (H) car number and initials; and
- (I) date of delivery.

(3) If no interstate shipments are transported into this state, a blank report shall be filed stating such fact.

(f) *Refund claims.*

(1) If any manufacturer or distributor shipped out of this state for consumption outside this state, or sold aboard ships for ships' supplies or shipped into any installation of the national military establishment, wherein the State of Texas has ceded police jurisdiction, for consumption by military personnel within such installation, any beer on which the state tax has been paid, such manufacturer or distributor may file claim for refund of the tax.

(2) Claim forms shall be furnished by the commission and claims must be executed under oath and be supported by copies of invoices on each shipment for which tax refund is claimed, together with a signed copy of the bill of lading from the carrier handling such shipment, if any.

(3) All such claims shall be filed by the shipper not later than 90 days after the date of shipment and no claim will be recognized by the commission if not filed within the 90-day period.

(g) *Importer's report.* In view of the provision of law requiring that the applicant be the holder of a distributor's or a manufacturer's license before he is eligible to obtain an importer's license, the tax liability fixed by law upon the importer shall be reported in such importer's report as a licensed distributor or manufacturer, and remittance of amounts due shall accompany the report.

(h) *Oaths.* Each report required by this section shall be signed and sworn to by the permittee or licensee or his duly authorized representative before a notary public, or other officer authorized to administer oaths.

(i) *Copies.* An exact copy of each report required by this section shall be retained in the files of the permittee or licensee and shall be kept by said permittee or licensee for a period of at least two years, subject to inspection of the commission or its authorized representative at all reasonable office hours.

(j) *Violations.* It shall be a violation of this section to fail or refuse to make any record or report herein required, or for any person to make or cause to be made any false or incorrect entry or entries on any record or report herein provided for. It shall further be in violation of this section to fail to make any entry or entries on any record or report provided by this section at the time or in the place or manner herein required.

Note: Amended Rule Adopted: October 22, 2012; Effective Date: November 15, 2012

§41.47 Airline Beverage Permits.

(a) Monthly Report of Individual Services and Excise Tax Due.

(1) Each holder of an airline beverage permit shall make a monthly report (Monthly Report of Individual Services and Excise Tax Due) to the commission on forms prescribed by the administrator.

(2) Said report shall be made and filed by said permittee with the commission at its offices at Austin, Texas, on or before the 15th day of the month following the calendar month for which the report is made. The total payment due for the month shall accompany each report and payment shall be made in the form of a cashier's check, certified check, or postal money orders made payable to the State Treasurer of Texas. The report shall show the following:

(A) The month for which the report is made, the permittee's name and address, and the permit number.

(B) Total of daily individual services, monthly total of services and service fee due for month.

(C) Total number of distilled spirits miniatures served daily and monthly totals of these services which are subject to excise taxes.

(D) Daily totals of wine gallons on which excise tax is due for all classifications of alcoholic beverages (excepting distilled spirits miniatures) and monthly totals of these gallons which are subject to excise taxes.

(E) The resulting excise tax due for month computed on subparagraphs (C) and (D) of this paragraph.

(F) The total payment due for month.

(b) Refunds. The holder of an airline beverage permit may apply to the commission for a refund of the excise tax on any liquor on which the state tax has been paid upon proper proof that the liquor was sold or disposed of outside the boundaries of the State of Texas. The claim shall contain the following:

(1) Two affidavits (duplicate originals) containing the following information for purchases from suppliers within this state:

(A) Total number of containers purchased during the month by seller, type of beverage and size of container.

(B) Total gallonage of all such purchases.

(C) Total excise taxes upon all such purchases.

(D) A statement outlining that all such purchases will be shipped out of Texas unless sold or served by the permittee in Texas and that if such purchases are sold or served in Texas the applicable Texas excise taxes will be reported and paid on or before the 15th day of the next succeeding month.

(2) Submit with each claim a single copy of the seller's invoice covering any alcoholic beverages described in the affidavits.

(3) Any claim to be considered by the commission must be filed by the airline beverage permittee not later than 120 days after the date of the earliest purchase date on the claim.

(4) Each claim submitted must include only purchases for one calendar month.

(c) Oaths. Each report required by this section shall be signed and sworn to by the permittee or his duly authorized representative before a notary public, or other officer authorized to administer oaths.

(d) Copies. An exact copy of each report required by this section shall be retained in the files of the permittee and shall be kept by the permittee for a period of at least two years, subject to inspection of the commission or its authorized representative at all reasonable office hours.

(e) Violations. It shall be a violation of this section to fail or refuse to make any record or report herein required, or for any person to make or cause to be made any false or incorrect entry or entries on any record or report herein provided for. It shall further be in violation of this section to fail to make any entry or entries on any record or report provided by this section at the time or in the place or manner herein required.

§41.48 Changes Relating to Control.

(a) Definitions. Unless otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms used in this section shall have the meaning ascribed in this subsection. Any terms defined in the Alcoholic Beverage Code shall have the meaning assigned to it by such code subject to modifications expressed in this section.

(1) Any change of--Any one of the following:

(A) Any addition of a person.

(B) Any removal of a person.

(C) Any transfer of title, responsibility, dominion or power from one or more persons to another person or persons.

(2) Effective control. Shall include, but is not limited to, situations in which a person (or persons) is in fact able to direct the general course of corporate affairs, even though such person or persons may not hold controlling ownership.

(3) Managerial control. With reference to any business conducted under authority of a permit, this term severally includes, but is not limited to, each of the following:

(A) Having discretion to formulate and institute operating policy regarding purchases, disbursements, maintenance of records or handling of funds.

(B) Having authority to hire or fire personnel.

(C) Having general supervisory authority over the operation of the business on a regular basis.

(4) Permit. Shall mean only a mixed beverage permit or private club permit and subsidiary permits of either. The original permit and all renewals thereof shall constitute a single, continuous authority within the meaning of this section.

(b) Disqualification. Any corporation which by any means is effectively controlled, jointly or severally, by a person or persons not then individually qualified for the issuance of a mixed beverage permit of his own, shall be disqualified to hold a mixed beverage permit.

(c) Change of control.

(1) Each corporation holding a mixed beverage permit shall report to the commission any change of effective control.

(2) Each corporation or unincorporated association holding a private club permit shall report to the commission any change of effective control.

(d) Reporting corporate change. Regardless of whether or not any change of control results therefrom, each corporation holding a mixed beverage permit and each holder of a private club shall report to the commission the following:

(1) Any change of officers.

(2) Any change of directors.

(3) If a corporation, any change of persons who severally hold not less than 10% of the outstanding shares of voting stock in such corporation.

(4) If a corporation, any change of persons who severally hold not less than 25% of the outstanding shares of nonvoting stock in such corporation.

(5) Any creditor of the corporation or unincorporated association holding demand for term certain obligations of such corporation in a cumulative amount equal or exceeding 25% of the book value of the assets of the corporation.

(6) Any change of persons exercising managerial control of the business conducted under authority of the permit.

(e) Disclosure. Upon request of the administrator, any corporation holding a mixed beverage permit, or any holder of a private club permit, shall disclose to the commission any information which may assist the administrator in determining whether or not any change has occurred in the control of that corporation or unincorporated association.

(f) Determination of effective control. If the administrator has reason to believe that a change may have occurred in the effective control of any corporation holding a mixed beverage permit, he may hold hearings to determine if such a change has occurred, and further to determine whether or not said corporation is presently, or was at any time within the present or next proceeding permit term, disqualified for renewal of said permit by virtue of any person or persons jointly or severally controlling such corporation.

(g) Cancellation. If upon notice and hearing the administrator finds that a change of control has occurred, and further finds that at any time within the present or next preceding permit term the persons jointly or severally controlling such corporation were, while so situated, not qualified for the issuance of a mixed beverage permit individually, the administrator shall immediately cancel said permit; provided, however, that if the administrator affirmatively finds to his satisfaction that no participant acted with intent to circumvent this rule or related provisions of the Alcoholic Beverage Code, he shall not cancel said permit but may, in his discretion, suspend said permit for a period not exceeding 60 days or dismiss the cause; and the administrator is hereby authorized in such cases to issue a conditional order, but no conditional status shall exceed one year beyond the entry of the order.

(h) Affidavit. In each instance in which this section requires information to be reported to the commission, such information shall be conveyed by affidavit from an officer of the corporation or unincorporated association and shall be due in the offices of the commission within 10 days of the event, unless the administrator shall allow or direct a different method or time.

(i) Reporting chain of control. In the event that a corporation holding a permit is jointly or severally controlled by another corporation, the corporation holding a permit shall report to the commission the same information about such other corporation as the permittee is required to report about itself. In the event that such other corporation is, in turn, jointly or severally controlled by a third corporation, and further regarding any additional chain of control in like

manner, the corporation holding the permit shall report to the commission information about each corporation in the chain of control the same as is required of the corporation holding the permit.

(j) Failure to provide information. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide any information required by this section.

(k) Timeliness. Upon notice and hearing, the administrator may suspend for a period not exceeding 60 days, or cancel, any mixed beverage permit or private club permit if he finds that the permittee has failed or refused to provide information required by this section in the time or manner prescribed by this section.

(l) Privilege. The reports required by this section shall not be deemed "periodic reports" within the meaning of §5.48 of the Alcoholic Beverage Code, and, unless otherwise made public under the provisions of the code, all such information shall be protected by the privilege declared in §5.48 of the Alcoholic Beverage Code.

(m) Administrator's discretion. The administrator shall have discretion to modify the application of this section to holders of private club exemption certificate permits, but he shall at all times invoke such requirements herein as he may deem necessary to ascertain that such permits are in fact controlled by the organization to whom the permit is issued.

§41.49 Private Clubs--Temporary Memberships.

(a) This rule relates to §32.09 of the Alcoholic Beverage Code.

(b) Temporary membership card.

(1) A holder of a private club registration permit shall issue a temporary membership card to any person who intends to be served alcoholic beverages on its licensed premises, except a person who is a member of the club, or a guest of a member of the club, or, if the club is located in a hotel, a patron of the hotel who is at the hotel for overnight lodging and is a guest of the hotel manager who is a member of the club.

(2) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(3) A holder of a private club registration permit shall prepare a record with entries made in chronological order showing the following about temporary membership cards issued: the date issued, the name of the person to whom the card was issued, and the serial number of the temporary membership card.

(c) A holder of a private club registration permit shall not serve an alcoholic beverage to a person who holds a temporary membership card, unless the temporary card is as follows:

(1) Issued by the commission to the club.

(2) Issued by the manager of the club, or other person in charge of the premises of the club, to the temporary member.

(3) The blanks, except signature blanks, on the temporary membership card have been properly filled by use of a typewriter or by printing in ink.

(4) Signed at the time of issuance by the manager of the club or other person in charge of the licensed premises.

(5) In possession of the temporary member to whom issued.

(d) Remittance.

(1) A temporary membership card shall not be issued to a club by the commission until the commission has received advance remittance of the effective fee established in the Texas Alcoholic Beverage Code. Such remittance shall be made only by cashier's check, certified check, corporate check, or United States postal money order payable to the Texas Alcoholic Beverage Commission.

(2) Temporary membership cards shall be issued by the commission upon written request of a club on forms provided by the commission together with the proper remittance.

(3) The commission shall issue temporary membership cards to any holder of a private club registration permit only in quantities of at least 50 cards at one time. If larger quantities are requested, the same shall be issued only in multiples of 50; provided, however, that the administrator is hereby empowered to authorize different multiples if necessary to conform with changes in the method of production of temporary membership cards.

Note: Amendment Adopted: October 27, 2003; Effective Date: December 14, 2003

§41.50 Gross Receipts Tax.

Note: Repeal Adopted: March 24, 2015; Effective Date: April 14, 2015

§41.51 Private Clubs--Purchases.

(a) Each holder of a private club registration permit operating under the pool system shall require each member of the pool to participate equally in the purchase of all alcoholic beverages and the replacement of all alcoholic beverages shall be purchased with money assessed and collected in advance from each member equally. No money from any other source may be used to purchase or replace alcoholic beverages purchased for use under the pool system.

(b) Each holder of a private club registration permit operating under the pool system shall prepare a record showing separately the pool assessments collected from each member and the disbursements of these collections for purchases of alcoholic beverages.

(c) Each holder of a private club registration permit and private club exemption certificate permit may purchase wine from only the holder of a local distributor's permit.

§41.52 Private Clubs--In General.

(a) Scope. This section does not apply to temporary members or to hotel patrons, as described in the Alcoholic Beverage Code, §§32.09, 32.10, and 32.11. In addition, subsection (c)(1)(G) and (H) and subsection (e) of this section do not apply to fraternal organizations or to veterans' organizations.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Club--A private club.

(2) Member and membership--a member of and membership in a private club.

(c) Membership and related topics.

(1) No private club shall be qualified to hold a private club registration permit unless it shall:

(A) have 50 or more members at all times;

(B) have a membership committee composed of three or more members of the club and vested with authority by charter, by-law or regulation to approve or reject membership applications and terminate existing memberships. The governing body of a club, if qualified under this provision, may be the membership committee, and when functioning as such shall be subject to and governed by all provisions herein relating to the membership committee. When considering a membership application or termination of membership, the membership committee shall keep written minutes showing the meeting date, the names of all committee members present, the name of any person admitted to membership, and the name of any person whose membership was terminated. No minutes shall be required of any discussion or action regarding a membership application which is denied;

(C) have, other than charter members, no members except those approved by at least three members of the membership committee at a meeting of such a committee;

(D) keep a well bound book in which is shown the following about each member: The full name of the member, his initial membership number which shall be issued in sequence, the current complete address of such member, the date such member was admitted to membership, and the date such member was removed from membership. Provided that when a member has been removed from membership, his membership number may be reassigned to another member. Provided further that additional well bound books may be used if necessary to record the information required by this paragraph, but all such books shall be kept permanently by the club. Provided further that a club using a business machine to maintain its membership records shall not be required to keep a well bound book if such machine provides such information as shall be required by the administrator, and is approved in writing by the administrator;

(E) keep all books, records and minutes required herein on the premises of such club, and make them available to any representative of the commission upon reasonable notice;

(F) maintain in force a bond executed by: the corporation, as principal, if an incorporated club; or, an officer of the club, as principal, if an unincorporated club. Such bond shall be executed by a surety company duly authorized and qualified to do business in this state, as surety, in an amount required by rule of the commission payable to the State of Texas conditioned that all fees and taxes owed by such club to the State of Texas shall be paid. Such bond shall be in a form approved by the administrator and the attorney general of Texas;

(G) if operating under the locker system, at all times keep all liquor owned by each member under the locker system in a locker located on the premises and rented only to such member, except when the member, one of his family or his guest is present on the premises and using such liquor; and

(H) if operating under the pool system, keep a well bound book in which is recorded the following about each member of the pool: His name and membership number, the date and amount of each liquor pool assessment, and the date of payment of the assessment. The information required to be kept in a book by this paragraph may be kept in the book required in subparagraph (D) of this paragraph. Provided that a club using a business machine to bill each member of its liquor pool shall not be required to have such well bound book if such machine provides such information as shall be required by the administrator and is approved by the administrator.

(2) No membership shall be terminated except by action of the membership committee or by written resignation of the member. Resignation of any member shall be

recorded immediately in the minute book of the membership committee and in the records required by paragraph (1)(D) of this subsection.

(3) The administrator may, after notice and hearing, refuse to issue a private club registration permit if he finds that the applicant has failed to comply with any requirement set forth in this subsection.

(4) After notice and hearing the administrator may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if he finds that the holder of the permit, its governing body, or any of its committees, officers, directors, members, agents, servants, or employees has failed to comply with any requirement set forth in this section.

(d) Who may consume. As provided in the Alcoholic Beverage Code, §32.01, alcoholic beverages owned by members of a private club may be served only to and consumed only by a member, a member's family, or their guests.

(1) The word "member" shall mean a person who has been admitted to membership as provided in subsection (c) of this section.

(2) The term "member's family" shall mean the spouse, parents, and adult children of the member.

(3) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(e) Food service. A private club shall provide regular food service adequate for its members and their guests. The term "food service adequate for its members and their guests" shall mean that complete meals shall be available on the club premises for service to members, their families, and guests.

(f) Suspension and cancellation. After notice and hearing the administrator may suspend for a period not exceeding 60 days, or cancel, a private club registration permit if he finds that the club or any of its members, agents, servants, or employees has:

(1) served, consumed or permitted another person to consume an alcoholic beverage on the premises of the club at any time when the private club registration permit of such club is suspended by an order of the administrator; and

(2) made a false statement or a misrepresentation in any book, record, minutes or report, or other written matter required to be kept or reported by this section or by any provision of the Alcoholic Beverage Code.

(g) Permittees may access electronically readable information on a driver's license, commercial driver's license or identification certificate for the purpose of verifying the accuracy of the records required by this rule. Information so accessed may not be retained longer than is reasonably necessary to insure verification. The information may not be marketed in any manner. Written consent must be obtained from the club member or prospective member when accessing electronically readable license information and proof of such consent must be maintained with the permittee's membership records.

Note: Amendment Adopted: April 28, 2003; Effective Date: May 22, 2003

§41.53 Required Records for Brewpubs.

(a) Each holder of a brewpub license shall make a monthly report (monthly report of beer, ale, and malt liquor manufactured, brewed, and disposed of) to the commission on forms prescribed by the administrator.

(b) The report shall be made and filed by the licensee with the commission at its offices at Austin, on or before the 15th day of the month following the calendar month for which the report is made and shall show:

- (1) the month for which the report is made, the license number and the name and address of the brewpub;
- (2) a full and correct record of each type of malt beverage produced during the month for which the report is made;
- (3) the date of each day's operation;
- (4) for each day's operation, the opening inventory in bulk gallons for each type of malt beverage;
- (5) for each day's operation, the closing inventory in bulk gallons for each type of malt beverage;
- (6) for each day's operation, the total gallons produced for each type of malt beverage;
- (7) for each day's operation, the total gallons of each type of malt beverage sold, offered without charge, or consumed; and
- (8) end of month totals, by type of malt beverage, of:
 - (A) bulk gallons in closing inventory;
 - (B) gallons produced;
 - (C) produced gallons in closing inventory; and
 - (D) gallons sold, offered without charge, or consumed.

(c) Holders of brewpub licenses must pay the tax on the total combined gallons of beer, ale, and malt liquor not later than the 15th day of the month following the month the malt beverages were sold, offered without charge, or consumed. A remittance, less 2.0% of the amount due when submitted within the required time, shall accompany the monthly report hereinbefore provided and shall be payable to the State Treasurer of Texas.

§41.54 Destructions.

(a) Each permittee subject to the provisions of the Alcoholic Beverage Code, §§201.03, 201.04, and 201.42 and each licensee subject to the provisions of the Alcoholic Beverage Code, §203.01 shall be entitled to receive an exemption from tax or a tax credit for any alcoholic beverages destroyed in accordance with the provisions stated herein.

(b) In order to qualify for this exemption from tax or a tax credit, the alcoholic beverages to be destroyed must meet the following criteria:

- (1) be in full unopened containers;
- (2) be unsalable or unmarketable;
- (3) have never been claimed for any other type of tax credit or exemption; and
- (4) have never been claimed for a refund of tax.

(c) The beverages, which will be claimed for destruction, must be destroyed in such a manner that the product will be rendered unrecoverable or unfit for human consumption.

(d) Prior to the destruction of the alcoholic beverages, the permittee or licensee must:

(1) notify the nearest authorized representative of the commission of the intent to destroy alcoholic beverages at least three full working days prior to the destruction. This notification must be made in writing on an "Application for Destruction of Alcoholic Beverages" and must contain the following information:

- (A) the account's trade name;

- (B) the account's location address;
- (C) the license or permit number of the licensee or permittee;
- (D) the reason the merchandise is to be destroyed;
- (E) the location at which the destruction will take place;
- (F) the time at which the destruction will take place;
- (G) the method to be used to destroy the alcoholic beverages;
- (H) the type of alcoholic beverages destroyed; and
- (I) a listing by brand, quantity, container size, and package size of the destroyed merchandise, if beer or ale and malt liquor are destroyed; or a summary by class of alcoholic beverage, quantity, container size, and wine gallons, if distilled spirits and wine are to be destroyed.

(2) Receive written approval from the nearest authorized representative of the commission to conduct the destruction.

(e) The licensee or permittee must obtain the following documentation for the tax exemption or credit claimed:

(1) A signed written approval for the destruction of the alcoholic beverages from the nearest authorized representative of the commission. This information should be retained in the licensee's or permittee's files and made available upon request for inspection by an authorized representative of the commission.

(2) If distilled spirits and wine are destroyed, a detailed listing by brand, type or class of liquor, and package size of all alcoholic beverages destroyed. This listing may be in the form of an invoice if the invoice provides all required information. The listing should not be submitted with the Monthly Wholesaler's Report but retained by the account for inspection by an authorized representative of the commission upon request.

(3) If the alcoholic beverages were destroyed at a location which charges a fee for this service, the licensee or permittee shall retain a copy of the receipt for payment for this fee and make such available to an authorized representative of the commission upon request.

(4) An affidavit of destruction executed by an employee of the licensee or permittee who witnessed the destruction of the alcoholic beverages. Separate affidavits must be prepared for distilled spirits and wine; ale and malt liquor; and beer. The affidavits should contain the following:

(A) the name and title of the person who witnessed the destruction and is preparing the affidavit;

(B) the date destroyed;

(C) the location where the destruction took place;

(D) how the merchandise was destroyed; and

(E) a copy of the original "Application for Destruction of Alcoholic Beverages".

(f) An original and two copies of the affidavit for destruction should be made and distributed as follows:

(1) The original should be submitted with the monthly report upon which the exemption for the destruction is claimed. If the licensee or permittee is unable to claim the destruction as an exemption on a tax report, they may submit a letter requesting an authorized tax credit. The request along with the destruction affidavit should be submitted to the commission's Austin headquarters.

(2) One copy should be retained in the licensee's or permittee's files and made available upon request for inspection by an authorized representative of the commission.

(3) The second copy should be forwarded to the commission office where the original "Application for Destruction of Alcoholic Beverages" was filed.

(g) The commission may designate an authorized representative to be present during the destruction of the alcoholic beverages.

§41.55 Malt Beverages for Export.

(a) This rule applies to §§19.05, 20.03, 21.03, 64.09, 65.08 and 66.11 of the Alcoholic Beverage Code.

(b) Each holder of a general distributor's license, branch distributor's license, local distributor's license, wholesaler's permit, general class B wholesaler's permit, and local class B wholesaler's permit with the intent to receive, store, transport, and deliver malt beverages, that are otherwise illegal to sell in this state because of alcohol content, container size, package or label, for export to another state, shall register with the commission prior to any transactions taking place.

(c) The registration shall be on forms as prescribed by the administrator and shall include an assignment of territory for the distribution and sale of the malt beverages from the manufacturer of the brand(s).

(d) A separate invoice, from malt beverages approved in Texas, is required for each transaction covering malt beverages purchased or sold as described in this section.

(e) Malt beverages for export that are otherwise illegal to sell in this state because of alcohol content, containers, packages or labels, shall be stored and segregated from other licensed products.

(f) Each transaction relating to malt beverages for export shall be reported separately on the monthly Distributors Report or Wholesalers Ale & Malt Liquor Report.

Note: New Rule Adopted: October 27, 2003; Effective Date: December 14, 2003

§41.56 Out-Of-State Winery Direct Shipper's Permits.

(a) This rule relates to Chapter 54 of the Alcoholic Beverage Code.

(b) Each holder of an out-of-state winery direct shipper's permit shall make reports (Direct Shipper's Report) to the commission on forms prescribed by the administrator.

(c) The report shall be made and filed by the permittee with the commission at its offices in Austin, Texas, on or before the 15th day of the month following the end of the reporting period for which the report is made and shall show:

(1) the reporting period and year for which the report is made, the permit number and the name and address of the winery;

(2) invoice date, invoice number, customer name, city, total wine gallons per invoice, and carrier making delivery for each sale and delivery.

(d) Holders of out-of-state winery direct shipper's permits must pay the excise tax on the total gallons of wine shipped into the state, not later than the 15th day of the month following the reporting period the wine was shipped into the state. Remittance of the tax due on wine, less 2.0% of the amount due when submitted within the required time, shall accompany the report

hereinbefore provided and shall be made by check, United States money order, or other acceptable methods of payment payable to the Texas Alcoholic Beverage Commission.

(e) As long as an out-of-state winery direct shipper's permit remains active, the report required herein must be filed even though no sales or shipments have been made.

(f) Holders of out-of-state winery direct shipper's permits that shipped 4,000 gallons annually or more to consumers in Texas during the previous calendar year, must file a quarterly report. Quarterly Reporting Periods: January 1, through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

(g) Holders of out-of-state winery direct shipper's permits that shipped less than 4,000 gallons annually to consumers in Texas during the previous calendar year, may file a yearly report. Yearly Reporting Period: January 1 through December 31.

Note: Amendment Adopted: January 25, 2008; Effective Date: February 20, 2008.

Note: Amendment Adopted: September 24, 2013; Effective Date: October 24, 2013

SUBCHAPTER D. SACRAMENTAL WINE

§41.61 Permission and Records.

(a) Any minister, priest, rabbi, or the authorized head of any religious organization may obtain any wine, tax free, for sacramental purposes.

(b) Each wholesaler, class B wholesaler, or winery shall, for each transaction, obtain a letter from the minister, priest, rabbi, or other authorized head of any religious organization who obtains from him any wine for sacramental purposes, tax-free, to the effect that said wine will be used for sacramental purposes. In computing tax liability, no credit shall be allowed for such transactions unless such letter is submitted as documentary proof that such wine was delivered to a minister, priest, rabbi, or other authorized head of a religious organization, and such letter shall be kept available for the inspection of a representative of the commission for a period of at least two years.

Note: Amended Rule Adopted: November 19, 2013 Effective Date: December 12, 2013

SUBCHAPTER E. IDENTIFICATION STAMPS

§41.71 Identification Stamps and Local Distributor's Records.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Identification stamp--The identification stamp mentioned in §28.15 and §32.20 of the Alcoholic Beverage Code.

(2) Invoice--An instrument issued by the seller of alcoholic beverages to a permittee.

(3) Mutilate—To scratch, cut, tear, or abrade in a manner which inflicts obvious and substantial damage to the stamp but does not totally remove or obliterate the stamp.

(4) Retail permittee—The holder of a mixed beverage permit, a private club registration permit, or private club exemption certificate permit.

(b) The holder of a local distributor's permit shall keep any record required by any rule of the commission or by the Alcoholic Beverage Code for a period of two years on his licensed

premises and shall make any such record available to a representative of the commission upon request within a reasonable time.

(c) Identification stamps shall be affixed only by the holder of a local distributor's permit to whom such stamps have been issued by the commission. When affixing identification stamps, the holder of a local distributor's permit shall affix each identification stamp near the top of the brand label of the bottle of distilled spirits in such a manner that some portion of the identification stamp covers and is attached to some portion of the brand label, but does not cover any information on the brand label. "Brand label" means the principal display panel that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(d) Transaction records.

(1) Each holder of a local distributor's permit shall prepare a record making an entry thereon on each date there occurs any of the following transactions involving identification stamps and showing the following:

(A) Quantity of identification stamps received.

(B) Quantity and serial numbers of identification stamps affixed, and also showing the invoice date, invoice number, retailer trade name, and retailer permit number;

(C) Quantity of identification stamps on hand after each receipt or affixing of such stamps.

(D) When the holder of a local distributor's permit affixes identification stamps prior to the sale of such stamped merchandise, he shall also record the date the merchandise is stamped showing the number of stamps used per brand and size. Stamped merchandise shall be stored separately from all other merchandise on hand. Stamps issued from pre-stamped stock must be listed individually per invoice line item on sales invoices prepared for retail sales.

(E) The serial number of each stamp issued, lost, stolen, voided, destroyed, or issued as a replacement stamp must be recorded.

(2) Full title and ownership of all identification stamps shall remain vested in the commission. Upon termination of any local distributor's permit, all unaffixed identification stamps on hand shall be surrendered to the commission along with distribution records of stamps issued by the local distributor permittee.

(e) An invoice shall be issued in original and one copy in consecutive numbered order, showing the date of the sale or distribution, the name and permit number of the seller and the purchaser, and the purchaser's complete address, the serial numbers of all identification stamps affixed to the merchandise, the quantity, brand and class of alcoholic beverages sold and the total price of each brand and class shown thereon. Such invoices or a copy thereof shall be delivered to the permittee and a copy of such invoices shall be kept by the seller making same. The seller's copy of the invoice must be signed by the purchaser.

(f) A local distributor may elect to maintain identification stamp records required by subsection (d) of this section in an electronic format using an automated stamp record system. If this election is made, the automated system must provide the information required by subsection (d) of this section, and the automated system must be inspected and have prior approval from the Commission.

(g) The invalidation of identification stamps required by §28.09 of the Alcoholic Beverage Code shall be done by mutilating the stamp. The marking of a stamp with ink, dye, or other material is not authorized as a method for invalidating the stamp.

- (h) No retail permittee shall possess or permit any person to possess on the permittee's licensed premises any distilled spirits in any container bearing an identification stamp which has been mutilated or otherwise damaged or marked to a substantial degree.
- (i) No retail permittee shall possess or permit any person to possess on the permittee's licensed premise, any blank or serially number TABC identification stamp that is not properly attached to a distilled spirits container that has been properly invoiced to the retail permittee by a local distributor.
- (j) All provisions of §§28.08, 28.09, and 28.15 of the Alcoholic Beverage Code applicable to a mixed beverage permittee shall apply to holders of private club registration permits, and private club exemption certificate permits.

Note: Amended Rule Adopted: September 24, 2013; Effective Date: October 24, 2013

§41.72 Invalidation of Stamps.

Note: Repeal Adopted: January 28, 2013 Effective Date: February 18, 2014

CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER A. REGISTRATION AND ADVERTISING OF DISTILLED SPIRITS

§45.1 Authority and Scope.

- (a) This subchapter implements Alcoholic Beverage Code §101.671, which provides for the registration of distilled spirits with the state.
- (b) This subchapter does not apply to distilled spirits for export or for industrial use.

§45.2 Definition.

When used in this subchapter, "distilled spirits" means alcohol, ethyl alcohol, hydrated oxide of ethyl, spirits of wine, whiskey, rum, brandy, gin, other distilled spirits, and any liquor produced in whole or in part by the process of distillation, including all mixtures and dilutions thereof.

§45.3 Alteration of Labels.

It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label on distilled spirits held for sale in this state except:

- (1) as authorized by Texas law;
- (2) that the administrator may, on written application, permit additional labeling or relabeling of bottled distilled spirits with labels covered by certificates of label approval which comply with the requirements of this subchapter and with state law; and
- (3) application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels together with a statement of the reasons for relabeling, the quantity and location of the distilled spirits, and the name, address, and permit number of the person by whom they will be relabeled.

§45.4 Bottle Cartons, Booklets, and Leaflets.

(a) General. An individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container), or any written, printed, graphic, or other matter accompanying the bottle to the consumer buyer shall not contain any statement, design, device, or graphic, pictorial or emblematic representation that is prohibited by this subchapter.

(b) Sealed opaque cartons. If bottles are enclosed in sealed opaque coverings, cartons, or other containers used for sale at retail (other than shipping coverings, cartons, or other containers) must bear all mandatory label information.

(c) Other cartons. If an individual covering, carton, or other container of the bottle used for sale at retail (other than a shipping container) is so designed that the bottle is readily removable and the covering carton or container is not sufficiently transparent to permit visibility of the mandatory label information on the bottle, and if it displays any written or printed material, other than the brand name and the name and address of the manufacturer, bottler, or importer (omitting any reference to the function performed by the permittee), such covering, carton, or other container must bear all mandatory label information.

(d) Shipping container. Each shipping container shall have imprinted on the outside the number and size of containers packed therein, and the brand name of the product.

§45.5 Labels: Prohibited Practices.

(a) Bottles containing distilled spirits, or any labels on such bottles, or any individual covering, carton, or other container of such bottles used for sale at retail, or any written, printed, graphic, or other matter accompanying such bottles to the consumer shall not contain the following:

(1) Any statement that is false or untrue in any particular or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression.

(2) Any statement that is disparaging of a competitor's product.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guarantee, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited.

(6) A trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this paragraph shall not apply to the use of the name of any person engaged in business as a distiller, rectifier, blender, or other producer, or as an importer, wholesaler, retailer, bottler, or warehouseman, of distilled spirits, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence or existing

private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935.

(7) No label shall contain any brand name which, standing alone, or in association with other printed or graphic matter, creates any impression or inference as to the age, origin, identity, or other characteristics of the product unless the administrator finds that such brand name (when appropriately qualified if required) conveys no erroneous impressions as to the age, origin, identity, or other characteristics of the product.

(b) Labels shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to, or is capable of being construed as relating to, the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flags or armed forces; nor shall any label contain any statement, design, device or pictorial representation of or concerning any flag, seal, coat of arms, crest or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(c) Labels shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effects if such statement is untrue in any particular or tends to create a misleading impression.

§45.6 Container and Fill Standards Required.

No permittee, directly or indirectly, or through an affiliate, shall sell or ship or deliver for sale or shipment, or otherwise introduce into the commerce of this state, or receive therein or remove from customs custody any distilled spirits in bottles unless such distilled spirits are bottled in conformity with §§45.7 - 45.9 of this title (relating to Standard Liquor Bottles; Standards of Fill; and Design and Fill Exceptions).

§45.7 Standard Liquor Bottles.

(a) General. A standard liquor bottle shall be one so made and formed, and so filled, as not to mislead the purchaser. An individual carton or other container of a bottle shall not be so designed as to mislead purchasers as to the size of the bottles.

(b) Headspace. A liquor bottle of a capacity of 1/2 pint or more shall be held to be so filled as to mislead the purchaser if it has a headspace in excess of 8.0% of the total capacity of the bottle after closure.

(c) Design. A liquor bottle shall be held (irrespective of the correctness of the stated net contents) to be so made and formed as to mislead the purchaser, if its actual capacity is substantially less than the capacity it appears to have upon visual examination under ordinary conditions or purchase or use.

§45.8 Standards of Fill.

(a) Authorized standards of fill. The standards of fill for all distilled spirits, whether domestically manufactured, domestically bottled, or imported, subject to the tolerances allowed in this section. In addition to these stated container sizes and standards of fill authorized for the importation and sale of distilled spirits in this state, any other container sizes and standards of fill

based on international metric units of measure and authorized by the United States Department of the Treasury are hereby authorized. However, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

1/2 gallon	4/5 pint
1 quart	1/2 pint
4/5 quart	1/8 pint
1 pint	1/10 pint
1 gallon	1/16 pint (brandy only)

(b) Tolerances. The following tolerances are allowed:

(1) discrepancies due to errors in measuring which occur in filling conducted in compliance with good commercial practice;

(2) discrepancies due to differences in the capacity of bottles, resulting solely from unavoidable difficulties in manufacturing such bottles to a uniform capacity; provided, that no greater tolerance shall be allowed in case of bottles which, because of their design, cannot be made approximately uniform capacity than is allowed in case of bottles which can be manufactured so as to be of approximately uniform capacity; and

(3) discrepancies in measure due to differences in atmospheric conditions in various places and which unavoidably result from the ordinary and customary exposure of alcoholic beverages in bottles to evaporation. The reasonableness of discrepancies under this paragraph shall be determined on the facts in each case.

(c) Unreasonable shortages. Unreasonable shortages in certain of the bottles in any shipment shall not be compensated by overages in other bottles in the same shipment.

§45.9 Design and Fill Exceptions.

The provisions of the "headspace" and "design" requirements in §45.7 of this title (relating to Standard Liquor Bottles) shall not apply to liquor bottles of unusual design as may, from time to time, be specifically excepted from these requirements by the administrator pursuant to application filed with the administrator by the bottler or importer, as the case may be.

§45.10 Withdrawal from Customs Custody.

No person shall withdraw distilled spirits from U.S. Customs custody in this state except in full compliance with federal and state law and the regulations of the commission.

§45.11 Advertising: Standards Required.

No person, directly or indirectly, or through an affiliate, shall publish or disseminate or cause to be published or disseminated by radio broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter, any advertisement of distilled spirits if such advertisement is in this state, is calculated to induce sales in this state, or is disseminated by mail in this state, unless such advertisement is in conformity with §§45.12 - 45.15 of this title (relating to Advertisement Defined; Advertising: Mandatory Statements; Advertising: Lettering; and Advertising: Prohibited Statements). However, §§45.12 -

45.15 of this title shall not apply to the publisher of any newspaper, periodical or other publication, or radio broadcaster, unless such publisher or radio broadcaster is a permittee.

§45.13 Advertising: Mandatory Statements.

(a) Responsible advertiser. An advertisement shall state the name and address of the permittee responsible for its publication or broadcast. Street number and name may be omitted in the address.

(b) Class and type. The advertisement shall contain a conspicuous statement of the class to which the product belongs and the type thereof corresponding with the statement of class and type which is required to appear on the label of the product.

(c) Alcoholic content. The alcoholic content shall be stated by proof for distilled spirits except that it may be stated in percentage by volume of cordials and liqueurs, cocktails, highballs, and such other specialties as may be specified by the administrator.

(d) Percentage of neutral spirits and name of commodity.

(1) In the case of distilled spirits (other than cordials, liqueurs, and specialties) produced by blending or rectification, if neutral spirits have been used in the production thereof, there shall be stated the percentage of neutral spirits so used and the name of the commodity from which such neutral spirits have been distilled. The statement of percentage and the name of the commodity shall be made in substantially the following form: "_____% neutral spirits distilled from ____ (insert grain, cane products, or fruit, as appropriate)"; or "_____% neutral spirits (vodka) distilled from ____ (insert grain, cane products, or fruit, as appropriate)"; or "_____% grain (cane products), (fruit) neutral spirits"; or "_____% grain spirits."

(2) In the case of neutral spirits or of gin produced by a process of continuous distillation, there shall be stated the name of the commodity from which such neutral spirits or gin has been distilled. The statement of the name of the commodity shall be made in substantially the following form: "distilled from grain," or "distilled from cane products," or "distilled from fruit."

(3) Retailers shall be exempt from the provisions of this subsection.

§45.14 Advertising: Lettering.

Statements required under §§45.11 - 45.13 and 45.15 of this title (relating to Advertising: Standards Required; Advertisement Defined; Advertising: Mandatory Statements; and Advertising: Prohibited Statements) to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

§45.15 Advertising: Prohibited Statements.

(a) Restrictions. An advertisement of distilled spirits shall not contain:

(1) Any statement that is false or untrue in any particular or that irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter, tends to create a misleading impression;

(2) any statement that is disparaging of a competitor's product;

(3) any statement, design, device, or representation which is obscene or indecent;

(4) any statement, design, device, or representation of or relating to analyses, standards or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;

(5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer. Enforceable money back guarantees are not prohibited;

(6) any statement that the distilled spirits are distilled, blended, made, bottled, or sold under or in accordance with any municipal, state, federal, or foreign authorization, law or regulation, unless such statement appears in the manner authorized by §45.5 of this title (relating to Labels: Prohibited Practices) for labels of distilled spirits. If a municipal, state or federal permit number is stated, such permit number shall not be accompanied by any additional statements relating thereto.

(b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of distilled spirits which is prohibited from appearing on the label or which is inconsistent with any statement on the label thereof.

(c) Statement of age. The advertisement shall not contain any statement, design, or device directly or by implication concerning age or maturity of any brand or lot of distilled spirits unless a statement of age appears on the label of the advertised product. When any such statement, design, or device concerning age or maturity is contained in any advertisement, it shall include (in direct conjunction therewith and with substantially equal conspicuousness) all parts of the statement, if any, concerning age and percentages required by the United States Department of the Treasury to be made on the label. An advertisement for any whiskey or brandy (except immature brandies) which is not required to bear a statement of age on the label or an advertisement for any rum, tequila or mescal, which has been aged for not less than four years may, however, contain inconspicuous, general representation as to age, maturity or other similar representation even though a specific age statement does not appear on the label of the advertised product and in the advertisement itself.

(d) Curative and therapeutic effects. The advertisement shall not contain any statement, design, or device representing that the use of any distilled spirits has curative or therapeutic effect, if such statement is untrue in any particular, or tends to create a misleading impression.

(e) Place of origin. The advertisement shall not represent that the distilled spirits were manufactured in or imported from a place or country other than that of their actual origin, or were produced or processed by one who was not in fact the actual producer or processor.

(f) Confusion of brands. Two or more different brands or lots of distilled spirits shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter) if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and if as to such latter the representations contravene any provisions of this regulation or are in any respect untrue.

(g) Flags, seals, coats of arms, crests, and other insignia. An advertisement shall not contain any statement, design, device, or pictorial representation which the administrator finds relates to or is capable of being construed as relating to the armed forces of the United States, or the American flag, or the Texas flag, or any emblem, seal, insignia, or decoration associated with such flag or armed forces; nor shall any advertisement contain any statement, design, device, or pictorial representation of or concerning any flag, seal, coat of arms, crest, or other insignia, likely to mislead the consumer to believe that the product has been endorsed, made, or used by,

or produced for or under the supervision of, or in accordance with the specifications of the government, organization, family, or individual with whom such flag, seal, coat of arms, crest, or insignia is associated.

(h) Cooperative advertising by retailers. It shall be unlawful for any person holding a package store permit to share the same advertisement of distilled spirits with any other person or persons holding a package store permit or permits, provided, however, that members of a partnership or corporation may share the same distilled spirits advertisement when said distilled spirits are offered for sale under the permit or permits held by the said partnership or corporation.

(i) Price advertising. All distilled spirits advertised with prices by package store permittees shall state the brand name of the distilled spirits offered for sale.

§45.16 Damaged Stock.

No distilled spirits may be sold or possessed for the purpose of sale in this state which have had fire, smoke, or water damage to the label, container, or contents, unless so authorized by the administrator.

§45.17 Intrastate Bottling.

It shall be unlawful for any distiller, rectifier, or other bottler of distilled spirits in this state to bottle or remove such distilled spirits from his premises unless he has first procured a certificate of label approval, or clearance of export procedure, from the administrator.

§45.18 Exhibiting Authority.

It shall be unlawful for any person holding an original or duplicate original of a certificate or label approval, or clearance of export procedure, to fail or refuse to exhibit the same upon request to any duly authorized representative of the commission.

§45.19 Certificate of Registration.

(a) No distilled spirit may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Distiller's and Rectifier's Permit or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit an Application to Register a Distilled Spirit (application) on the form prescribed by the commission along with the application fee to the commission. The application must contain the following information:

(1) A certificate of label approval (COLA) issued by the United States Department of the Treasury;

(2) product brand name; and

(3) product class and type.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the distilled spirit as shipped or sold, or an exact color copy of a label must be included with the application.

(e) The application fee for a Certificate is \$25.

Note: New Subchapter A Adopted: July 26, 2011; Effective: August 21, 2011

SUBCHAPTER B. REGISTRATION AND ADVERTISING OF WINE

§45.41 Authority and Scope.

(a) This subchapter implements Alcoholic Beverage Code §101.671, which provides for the registration of wine with the state.

(b) This subchapter does not apply to wine produced pursuant to §109.21, Alcoholic Beverage Code, or to wine which is to be exported in bond.

§45.42 Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) *Brand label* --The label carrying, in the usual distinctive design, the brand name of the wine.

(2) *Container* --Any bottle, barrel, cask, tank car, or other closed receptacle irrespective of size or of the material from which made, for use for the sale of wine.

(3) *Wine* --A product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, berries, or honey, and includes wine coolers and other alcoholic beverages made in the manner of wine, including sparkling and carbonated wine, vermouth, cider, sake, and perry.

§45.43 Coined Names.

The sale in this state of wines or combinations of wine and other alcoholic beverages which contain on the labels statements such as "whiskey wine," "rum and wine," "gin and wine," "beer and wine," or simulations of such combinations, is prohibited.

§45.44 Containers.

(a) The sale of wine in any container originally designed for a product other than wine or in any container the design or shape of which would tend to mislead the consumer as to the nature of the contents is hereby prohibited.

(b) The sale of wine in containers which have blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a wine producer, importer, wholesaler, or bottler, or any other person, different from the person whose name is required to appear on the brand label, is hereby prohibited.

(c) The capacity of containers authorized for the importation and sale of wine in this state and other container sizes and standards of fill based on international metric units of measure which are authorized by the United States Department of the Treasury are hereby authorized. However, no container size or standard of fill prohibited by the Alcoholic Beverage Code shall be construed to be permitted by this section.

§45.45 Certificate of Registration.

(a) No wine may be shipped into the state or sold within the state without a Certificate of Registration (Certificate) issued by the commission.

(b) An applicant for a Certificate under this section must hold a Winery or a Nonresident Seller's Permit issued by the commission.

(c) An applicant must submit to the commission an Application to Register a Wine (application) on the form prescribed by the commission along with the application fee. The application must contain the following information:

(1) A certificate of label approval (COLA) issued by the United States Department of the Treasury;

(2) product brand name;

(3) product class and type;

(4) fanciful name;

(5) appellation and vintage;

(6) alcohol content; and

(7) size of container.

(d) A legible copy of the COLA must be included with the application. If the COLA is not legible, an actual label that is affixed to the wine as shipped, sold, or marketed, or an exact color copy of a label must be included with the application. A sample of the wine, along with a set of labels, is required if the alcohol content is below 7% by volume and a federal COLA is not required.

(e) The application fee for a Certificate of Registration is \$25.

§45.46 Label: Prohibited Statements.

(a) No label for wine shall contain:

(1) Any statement, design, device, or representation which is false or misleading in any material particular.

(2) Any statement which is disparaging of a competitor's products.

(3) Any statement, design, device, or representation which is obscene or indecent.

(4) Any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which is likely to mislead the consumer.

(5) Any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, other than a bona fide guarantee to refund the purchase price if the consumer is dissatisfied.

(b) No label for wine without a COLA from the United States Department of the Treasury shall contain:

(1) Any statement that the wine is produced, blended, bottled, or sold under, or in accordance with, any municipal, state or federal authorization, law, or regulation; and if a municipal, state or federal license, registry or permit number is stated, the number shall not be accompanied by any statement relating thereto except the kind or character of the license, registration or permit to which the number pertains, in relatively inconspicuous type size.

(2) Any statement, design, or pictorial representation relating to the armed forces of the United States or the American flag.

(3) Any statement, design, or representation (other than a statement of alcoholic content) which tends to create the impression that the wine has been fortified or contains distilled spirits, or has intoxicating qualities.

(4) Any statement of age or representation relative to age (including words or devices in any brand name or mark), except that, in the case of vintage wine, the label may state the year of vintage, but no other age representation in respect thereto. The use of the word "old" or other word denoting age, as part of the brand name, shall not be deemed to be a representation relative to age if the word "brand" appears in direct conjunction with such brand name, in letters of equally conspicuous color and at least one-half the size of the lettering in which such brand name appears. Truthful reference of a general and informative nature relating to methods of wine production involving storage or aging, such as "this wine has been mellowed in oak casks," "stored in small barrels," or "matured at regulated temperatures in our cellars," may appear, but only in an inconspicuous manner and then only on back labels or on other matter accompanying the container.

(5) Any statement of a date, except as provided in the foregoing paragraph, unless, in addition thereto, and in direct conjunction therewith, in the same size and kind of printing there shall be stated an explanation of the significance of such date; provided, that if any date refers to the date of establishment of any business, such date shall be stated without due emphasis and in direct conjunction with the name of the person to whom it refers; and provided further, that the date of bottling appears in lettering not greater than eight-point gothic caps and the word "bottled" or its equivalent appears in direct conjunction therewith.

§45.47 Customs Custody.

(a) It shall be unlawful for any person to withdraw from customs custody any imported wine in this state unless the same conforms in every way with all provisions set forth in this subchapter relative to labeling.

(b) Imported wine in customs custody, which is not labeled in conformity herewith must be relabeled prior to release in accordance with the terms of this subchapter.

§45.48 Advertising.

(a) *General.* No person shall publish or disseminate, or cause to be published or disseminated, by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other graphic or printed matter, in this state, any advertisement of wine unless such advertisement is in conformity with the provisions of this subchapter.

(b) *Responsible advertiser.* The advertisement shall state the name and address of the person responsible for its publication or broadcast. Street number and name may be omitted in the address.

(c) *Class and type designation.* If the advertisement contains any reference to a particular class or type of wine, there shall appear a conspicuous statement of the class and type to which the product belongs, corresponding with the statement of class and type which is required to appear on the label of the product.

(d) *Price advertising.* All wines advertised with prices by package store permittees and wine only package store permittees shall state the brand name, class, and type of the wine offered for sale.

(e) *Institutional advertising.* The provisions of this section shall not apply to the institutional advertising of wines inside any building in an area where the sale of such wines is legal; provided, such advertising has been submitted to and approved by the administrator.

§45.49 Advertising: Prohibited Statements.

- (a) *General.* An advertisement shall not contain the following:
- (1) Any statement, design, device or representation which is prohibited from appearing on the label of the advertised product.
 - (2) Any statement of, or any statement likely to be regarded as a statement of, alcoholic content.
- (b) *Confusion of brands.* Two or more different brands or lots of wine shall not be advertised in one advertisement, or in two or more advertisements in one issue of a periodical or newspaper, or in one piece of other written, printed, or graphic matter, if the advertisement tends to create the impression that representations made as to one brand or lot apply to the other or others, and such impression is in any respect untrue.
- (c) *Cooperative advertising.* It shall be unlawful for any person holding a package store permit or a wine only package store permit to share the same advertisement of wines with any other person holding a package store permit or a wine only package store permit. A person holding permits for more than one location may advertise wines for sale at any or all such locations in the same advertisement.
- (d) *Fire sale prohibited.* No wine possessed for the purpose of sale in this state shall be advertised for sale as the result of fire, smoke, or water damage to the label, container or contents.

§45.50 Examination.

- (a) Samples of wine and vinous liquor shall be taken for examination by representatives of the commission whenever deemed necessary by the administrator. Examinations may include any chemical or physical determinations for the measurement of contents, the detection of alteration, and lack of conformity to standards of identity, quality, and purity, as set forth in the code and the rules of the commission.
- (b) It shall be unlawful for any producer or bottler of wine to accept as a return or to purchase or to use any container permanently branded or imprinted with the name of another producer or bottler of any alcoholic beverage.
- (c) The alcoholic content requirements set forth in this section shall not apply to sacramental or altar wines where ecclesiastical regulations limit the alcoholic content to not more than 18% by volume. Provided, however, that such wines shall be labeled "Sacramental" or "Altar" wines.
- (d) It shall be unlawful for any permittee to bring into this state, store, sell, or possess for the purpose of sale, any bottles of wine which are not protected from tampering or contamination by being sealed with seals of a type which must be irreparably mutilated or destroyed before the bottle can be opened. Such seals shall not be made of paper.

§45.51 Illicit Beverage.

Any wine or container of which does not meet all the requirements of this subchapter shall be an illicit beverage and subject to seizure without warrant. The administrator may authorize such

disposition as facts and circumstances may warrant of any wine which has been seized as the result of an accidental shipment or other reasonable mistake. All wine which cannot be restored to meet the standards of purity shall be destroyed.

Note: New Subchapter B Adopted: July 26, 2011; Effective: August 21, 2011

SUBCHAPTER C. STANDARDS OF IDENTITY FOR MALT BEVERAGES

§45.71 Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Beer--A malt beverage containing one half of one percent or more of alcohol by volume and not more than 4.0% of alcohol by weight.
- (2) Bottler--Any person who places malt beverages in containers.
- (3) Brand label--The label carrying, in the usual distinctive design, the brand names of the malt beverage.
- (4) Container--Any can, bottle, barrel, keg, or other closed receptacle, irrespective of size or of the material from which made, for use for the sale of malt beverages at retail. This provision does not in any way relax or modify §1.04(18) of the Alcoholic Beverage Code.
- (5) Domestic malt beverages--A malt beverage manufactured in the United States.
- (6) Gallon--United States gallon of 231 cubic inches of malt beverages at 39.2 degrees Fahrenheit (4 degrees Celsius). All other liquid measures used are subdivisions or multiples of the gallon as so defined.
- (7) Independent laboratory--A laboratory which has a good reputation in the industry and is not affiliated with the Texas Alcoholic Beverage Commission or with any entity regulated by the Texas Alcoholic Beverage Commission.
- (8) Malt beverage--A beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.
- (9) Malt liquor--Any malt beverage containing more than 4.0% of alcohol by weight. In this subchapter, "malt liquor" and "ale" have the same meaning.

Note: Amended Rule Adopted: July 24, 2012; Effective Date: August 26, 2012

§45.72 Scope.

(a) This subchapter implements Alcoholic Beverage Code §101.67, which provides that no person may ship or cause to be shipped into the state, manufacture and offer for sale in the state, or distribute, sell or store in the state any beer, ale or malt liquor unless the label has been approved by the commission and a sample has been analyzed to verify the alcohol content of the beverage.

(b) Sections 45.73 - 45.82 of this title (relating to Label: General; Misbranding; Mandatory Label Information for Malt Beverages; Brand Names; Class and Types; Name and Address;

Alcoholic Content; Net Contents; General Requirements for Malt Beverages; and Prohibited Practices) shall apply to all malt beverages manufactured, sold, or possessed for the purpose of sale in this state.

(c) Section 45.83 and §45.84 of this title (relating to Label Approval and Release and Relabeling), shall apply to withdrawals of malt beverages from customs custody.

(d) Section 45.85 and §45.86 of this title (relating to Approvals of Labels and Exhibiting Certificates to Representatives of the Commission) shall apply to any person who manufactures, imports into, transports, sells or offers for sale any malt beverages in this state.

(e) It shall be unlawful for any person to publish or disseminate, or cause to be published or disseminated by radio or television broadcast, or in any newspaper, periodical, or other publication, or by any sign or outdoor advertisement, or any other printed or graphic matter any advertisement of malt beverages if such advertisement is in this state, is calculated to induce sales in this state, or is disseminated by mail in this state, unless such advertisement is in conformity with this subsection and §§45.87 - 45.90 of this title (relating to Advertisement Defined; Advertisement: Mandatory Statement; Advertisement: Legibility of Requirements; and Advertisement: Prohibited Statements).

(f) This subchapter shall not apply to outdoor advertising in place as of June 1, 1937, but shall apply upon replacement, restoration, or renovation of any such advertising.

(g) This subchapter shall not apply to the publisher of any newspaper, periodical or other publication, or radio or television broadcaster, unless such publisher or broadcaster is engaged in business as a manufacturer, brewer, wholesaler, distributor, bottler, importer, or retailer of malt beverages, directly or indirectly, or through an affiliate.

Note: Amended Rule Adopted: July 26, 2011; Effective Date: August 21, 2011

§45.73 Label: General.

(a) The purpose of this section is to implement Alcoholic Beverage Code §101.67 (Prior Approval of Malt Beverages) and §101.41 (Containers, Packaging, and Dispensing Equipment of Beer: Labels), pursuant to the requirements of Alcoholic Beverage Code §5.38 (Quality and Purity of Beverages) and the authority of Alcoholic Beverage Code §5.31 (General Powers and Duties). The section applies the prohibitions in Alcoholic Beverage Code §102.07(a)(2) and §102.15 (a)(1) in the labelling context.

(b) It shall be unlawful for any person to transport, sell, or possess for the purpose of sale in this state any malt beverage, directly or indirectly, or through an affiliate, or remove from customs custody any malt beverage in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with this subchapter.

(c) Alteration of labels.

(1) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale, except as authorized by law; provided, that the administrator may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this subchapter or of law.

(2) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the

reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

(d) Only a brewer's or non-resident brewer's permittee, a manufacturer's or non-resident manufacturer's licensee, or a brewpub licensee under §45.96 of this chapter may apply for and receive label approval on beer, ale, or malt liquor.

(e) No application for a label filed by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee shall be approved which:

(1) indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or any private club registration permittee; or

(2) includes the name, tradename, or trademark of any retailer permittee or licensee or any private club registration permittee.

(f) The sale of a brand of malt beverages by a brewer's or non-resident brewer's permittee or a manufacturer's or non-resident manufacturer's licensee exclusively to the holder of a license or permit authorizing the retail sale or service of malt beverages, or exclusively to retail licensees or permittees under common ownership, control, or management, to the exclusion of other retail licensees or permittees is specifically prohibited and the label approval for any such label shall be cancelled and withdrawn.

Note: Amended Rule Adopted: July 22, 2014; Effective Date: August 12, 2014

§45.74 Misbranding.

Malt beverages in containers shall be deemed to be misbranded:

(1) if the container fails to bear on it a brand label (or a brand label and other permitted labels) containing the mandatory label information as required by this rule and the Alcoholic Beverage Code, and conforming to the general requirements specified by this subchapter;

(2) if the container, cap, or any label on the container, or any carton, case, or other covering of the container used for sale at retail, or any written, printed, graphic, or other matter accompanying the container to the consumer buyer contains any statement, design, device, or graphic, pictorial, or emblematic representation that is prohibited by this subchapter or the Alcoholic Beverage Code; or

(3) if the container has blown, branded, or burned therein the name or other distinguishing mark of any person engaged in business as a manufacturer, brewer, wholesaler, distributor, bottler, or importer, of malt beverages, or of any other person, except the person whose name is required to appear on the brand label.

Note: Readopted Without Changes and Effective: July 26, 2011

§45.75 Mandatory Label Information for Malt Beverages.

There shall be stated the following:

- (1) On the brand label:
 - (A) Brand name, in accordance with §45.76 of this title (Relating to Brand Names).
 - (B) Class in accordance with §45.77 of this title (relating to Class and Types).

(C) Name and address (except when branded or burned in the container) in accordance with §45.80 of this title (relating to Net Contents).

(2) On the brand label or on a separate label (back and front):

(A) In the case of imported malt beverages, name and address of importer, in accordance with §45.78 of this title (relating to Name and Address).

(B) In the case of malt beverages bottled for a licensee or permittee, the name and address of the bottler in accordance with §45.78 of this title (relating to Name and Address).

§45.76 Brand Names.

(a) General. Malt beverages shall bear a brand name, except that if not sold under a brand name, then the name of the person required to appear on the brand label shall be deemed a brand name for the purpose of this subchapter.

(b) Brand names of geographical significance. Where a geographical name or adjective is used as the brand name, or a part of the brand name, and the administrator finds that the use of such a geographical name or adjective, or any statement, design or device appearing upon the label in conjunction therewith, tends to create the impression that the product was produced in a place or region other than that of actual production, the administrator may require the word "brand" to be stated in direct conjunction with such geographical name or adjective, in lettering at least one-half the size of the lettering in which such name or adjective appears on the label. If the administrator finds that the addition of the word "brand" does not remove the misleading impressions conveyed by the use of such geographical name or adjective, he may require, in addition to the word "brand," other appropriate language which will disclose the true place of production.

§45.77 Class and Type.

(a) Every malt beverage label shall bear, in legible and easily viewed writing:

(1) The word "beer," if the product contains one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, or the word "ale" or "malt liquor" if the product contains more than four percent of alcohol by weight; and/or

(2) A truthful statement of the appropriate class or style of the product using terms commonly recognized in the malt beverage industry, accompanied by the alcohol content of the product in percentage of alcohol by volume (expressed to the nearest one-tenth of a percent).

(b) No product containing less than 0.5% of alcohol by volume shall bear the class designation "beer," "lager," "lager beer," "ale," "porter," or "stout," or any other class or type designation commonly applied to malt beverages containing 0.5% or more of alcohol by volume.

(c) Nothing shall prevent a malt beverage labeled pursuant to subsection (a)(1) of this section from also bearing a class or style designation that is recognized in the brewing industry, such as, but not limited to, "porter," "stout," or "lager," provided such beer, ale, or malt liquor has the characteristics of such class or style.

(d) Geographical names for distinctive types of malt beverages (other than names found by the commission or administrator under subsection (e) of this section to have become generic) shall not be applied to malt beverages produced in any place other than the particular region indicated by the name unless: in direct conjunction with the name there appears the word "type" or the word "American," or some other statement indicating the true place of production in lettering substantially as conspicuous as such name; and the malt beverages to which the name is

applied conform to the type so designated. The following are examples of distinctive types of beer with geographical names that have not become generic: Dortmund, Dortmunder, Vienna, Wien, Wiener, Bavarian, Munich, Munchner, Salvator, Kulmbacher, Wartzburger.

(e) Only such geographical names for distinctive types of malt beverage as the commission or administrator finds have by usage and common knowledge lost their geographical significance to such an extent that they have become generic shall be deemed to have become generic. Pilsen beer (Pilsenor, Pilsner) is a distinctive type of beer with a geographical name which has become generic.

(f) Except as provided in §45.75 of this title (relating to Mandatory Label Information for Malt Beverages), geographical names that are not names for distinctive types of malt beverages shall not be applied to malt beverages produced in any place other than the particular place or region indicated in the name.

Note: Amendment Adopted: July 24, 2012; Effective: August 26, 2012

§45.78 Name and Address.

(a) Domestic malt beverages. On labels of containers of domestic malt beverages there shall be stated, the name of the bottler and the place where bottled. The bottler's principal place of business may be shown in lieu of the actual place where bottled if the address shown is a location where bottling actually takes place. If such malt beverages are bottled for a person other than the actual bottler there may be stated in addition to the name and address of the bottler (but not in lieu thereof), the name and address of such person immediately preceded by the words "bottled for," "distributed by," or some other similar appropriate phrase.

(b) Imported malt beverages. On labels of containers of imported malt beverages there shall be stated the words "imported by," or a similar appropriate phrase, and immediately thereafter the name of the licensee or permittee who is the importer, together with the principal place of business of such licensee or permittee. In addition there may, but need not, be stated the name and principal place of business of the foreign manufacturer, bottler, or shipper.

(c) Post office address. The "place" stated shall be the post office address, except that the street address may be omitted. No additional places or addresses shall be stated for the same person, unless:

(1) such person is actively engaged in the conduct of an additional bona fide and actual malt beverage business at such additional place or address; and

(2) the label also contains, in direct conjunction therewith, appropriate descriptive material indicating the function occurring at such additional place or address in connection with the particular malt beverage.

(d) Notwithstanding the above, the commission may refuse an application for label approval if they believe there is any information, included or excluded, on the label that causes consumers to be confused or misled.

Note: Amendments Adopted: April 25, 2005; Effective Date: June 9, 2005

§ 45.79 Alcoholic Content.

(a) The alcoholic content and the percentage and quantity of the original extract may be stated.

(b) Form of statement.

(1) If the alcoholic content is stated, it shall be stated in percentage of alcohol by volume, and shall not be stated by percent by weight, proof, or by maximums or minimums.

(2) The statement of alcoholic content shall be expressed to the nearest one-tenth of a percent, subject to the tolerance permitted by subsection (c) of this section.

(c) Tolerances.

(1) For malt beverages containing 0.5% or more of alcohol by volume, a tolerance of 0.3% will be permitted, either above or below the stated percentage of alcohol.

(2) Any malt beverage labeled as having more than 0.5% or more alcohol by volume may not contain less than 0.5% alcohol by volume, regardless of any tolerance.

(3) Any malt beverage labeled as "beer" may not contain more than 4.0% alcohol by weight regardless of any tolerance permitted in paragraph (1) of this subsection, unless the alcoholic content is stated on the label.

(4) Any malt beverage labeled as "malt liquor," "ale," or other such similar designation may not contain 4.0% or less alcohol by weight regardless of any tolerance permitted in paragraph (1) of this subsection, unless the alcoholic content is stated on the label.

(5) For malt beverages which are labeled as "low alcohol" or "reduced alcohol" under subsection (d) of this section, the actual alcoholic content may not equal or exceed 2.5% alcohol by volume, regardless of any tolerance permitted in paragraph (1) of this subsection.

(d) Low alcohol or reduced alcohol. The terms "low alcohol" or "reduced alcohol" may only be used on malt beverages containing less than 2.5% alcohol by volume.

(e) Alcoholic Content Statement. All portions of any alcoholic content statement shall be of the same size and kind of lettering and of equally conspicuous color.

Note: Amended Rule Adopted: July 24, 2012; Effective Date: August 26, 2012

§45.80 Net Contents.

(a) Net contents of malt liquors shall be stated as follows:

(1) If less than one pint, in fluid ounces fractions of a pint.

(2) If one pint, one quart or one gallon, the net contents shall be so stated.

(3) If more than one pint, but less than one quart, the net contents shall be stated in fractions of a quart, or in fluid ounces, or in pints and fluid ounces.

(4) If more than one quart, but less than one gallon, the net contents shall be stated in fractions of a gallon, or in quarts, pints and fluid ounces.

(b) Net contents of beer shall be stated as follows:

(1) one barrel;

(2) 1/2 barrel;

(3) 1/4 barrel;

(4) 1/8 barrel;

(5) 32 fluid ounces;

(6) 24 fluid ounces;

(7) 16 fluid ounces;

(8) 12 fluid ounces;

(9) 8 fluid ounces; and

(10) 7 fluid ounces.

(c) All fractions shall be expressed in their lowest denominations.

(d) The net contents need not be stated on any label if the net contents are displayed by having the same blown, branded, or burned in the container in letters or figures in such manner as to be plainly legible under ordinary circumstances and such statement is not obscured in any manner in whole or in part.

§45.81 General Requirements for Malt Beverages.

(a) Contrasting background. All labels shall be so designed that all statements thereon required by this subchapter are readily legible under ordinary conditions, and all such statements shall be on a contrasting background.

(b) Size of type. All statements required on labels by this subchapter shall be in readily legible script, type, or printing. If contained among other descriptive or explanatory reading matter, the script, type, or printing of all required material shall be substantially more conspicuous than such other descriptive or explanatory reading matter.

(c) English language. All information, other than the brand name, required by this subchapter to be stated on labels shall be in the English language. Additional statements in foreign languages may be made, if such statements do not in any way conflict with, or are not contradictory to, the requirements of this subchapter.

(d) Labels firmly affixed. All labels shall be affixed to containers of malt beverages in such manner that they cannot be removed without thorough application of water or other solvents.

(e) Additional information. Labels may contain information other than the mandatory label information required by this subchapter and the Alcoholic Beverage Code, provided such information complies with the requirements of this section and does not conflict with, nor in any manner qualify statements required by any of the terms of the Alcoholic Beverage Code or rules promulgated by the commission.

Note: Readopted Without Changes and Effective: July 26, 2011

§45.82 Prohibited Practices.

(a) Statements on labels. Containers of malt beverages, or any labels on such containers, or any carton, case, or individual covering of such containers, used for sale at retail, or any written, printed, graphic or other matter accompanying such containers to the consumer shall not contain the following:

- (1) any statement that is false or untrue in any particular, or that, irrespective of falsity, directly or by ambiguity, omission, or inference, or by the addition of irrelevant, scientific, or technical matter tends to create a misleading impression;
- (2) any statement that is disparaging of a competitor's products;
- (3) any statement, design, device, or representation which is obscene or indecent;
- (4) any statement, design, device, or representation of or relating to analyses, standards, or tests, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
- (5) any statement, design, device or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer;
- (6) a trade name or brand name that is the name of any living individual of public prominence, or existing private or public organization, or is a name that is in simulation or is an abbreviation thereof, or any graphic, pictorial, or emblematic representation of any such

individual or organization, if the use of such name or representation is likely to falsely lead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, such individual or organization; provided, that this subsection shall not apply to the use of the name of any person engaged in business as a producer, importer, bottler, wholesaler, distributor, retailer, or warehouseman, of malt beverages, nor to the use by any person of a trade or brand name that is the name of any living individual of public prominence, or existing private or public organization, provided such trade or brand name was used by him or his predecessors in interest prior to August 29, 1935;

(7) pursuant to Alcoholic Beverage Code §102.07(a)(2) and §102.15(a)(1), and except as authorized by §45.96 of this chapter, any statement, design, device, or representation that:

(A) the malt beverage is brewed or bottled for any retail licensee or permittee or private club registration permittee; or

(B) includes the name, tradename or trademark of any retail licensee or permittee or private club registration permittee.

(b) Simulation of government stamps. No label shall be of such design as to resemble or simulate a stamp of the United States government or of any state or foreign government. No label, other than stamps authorized or required by the United States government or any state or foreign government, shall state or indicate that the malt beverage contained in the labeled container is brewed, made, bottled, labeled, sold under, or in accordance with any municipal, state, federal, or foreign government authorization, law, or regulation, unless such statement is required or specifically authorized by federal or state law or regulations of the foreign country in which such malt beverages were produced. If the foreign municipal or state government permit number is stated upon a label, it shall not be accompanied by an additional statement relating thereto, unless required by the law of that state or foreign municipality.

(c) Use of word "bonded," etc. The words "bonded," "bottled in bond," "aged in bond," "bonded age," "bottled under customs supervision," or phrases containing these or synonymous terms which imply governmental supervision over production, bottling, or packaging, shall not be used on any label for malt beverages.

(d) Statements, seals, flags, coats of arms, crests, and other insignia. Statements, seals, flags, coats of arms, crests, or other insignia, or graphic, or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by, or produced for, or under the supervision of, or in accordance with the specifications of, the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited on any label of malt beverages.

(e) Curative and therapeutic effects. Labels shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects, if such statement is untrue in any particular or tends to create a misleading impression.

(f) Coverings, cartons, cases. Individual coverings, cartons, cases, or other wrappers of containers of malt beverages, used for sale at retail, or any written, printed, graphic, or other matter accompanying the container shall not contain any statement, or any graphic, pictorial, or emblematic representation, or other matter, which is prohibited from appearing on any label or container of malt beverage. It shall be unlawful for any retailer to affix to any carton or case any paper or sticker bearing any painted, printed, or other graphic matter whatsoever; and it shall be

unlawful for any retailer to paint, imprint, or otherwise impose any wording, lettering, picture, or design of any character whatsoever on any carton or case.

Note: Amended Rule Adopted: July 24, 2012; Effective Date: August 26, 2012

Note: Amended Rule Adopted July 22, 2014; Effective Date: August 12, 2014

§45.83 Label Approval and Release.

On or after the effective date of this subchapter, it shall be unlawful for any person to withdraw from customs custody in this state any malt beverages unless contained in lawful containers as required by the Alcoholic Beverage Code and rules of the commission and labeled in accordance with the provisions of such code and the rules of the commission.

Note: Readopted Without Changes and Effective: July 26, 2011

§45.84 Relabeling.

Imported malt beverages in customs custody which are not labeled in conformity with certificate of label approval, issued by the administrator must be relabeled in accordance with requirements of this rule and the Alcoholic Beverage Code prior to withdrawal.

Note: Readopted Without Changes and Effective: July 26, 2011

§45.85 Approval of Labels.

(a) No beer, ale or malt liquor may be shipped into the state, imported into the state, manufactured and offered for sale in the state, or distributed, sold or stored in the state until a sample of the beverage has been analyzed and the label approved by the commission.

(b) An applicant for label approval under this section must hold a brewer's or non-resident brewer's permit, or a manufacturer's or non-resident manufacturer's license issued by the commission.

(c) An applicant must submit to the commission an application on the form prescribed by the commission and the application fee. The application must be accompanied by:

(1) a legible copy of the certificate of label approval issued by the United States Department of the Treasury; and

(2) an actual label that is affixed to the product as shipped, sold, or marketed, or an exact color copy of the label.

(d) A sample of the beverage must be submitted to the commission for analysis to verify alcohol content. A product analysis provided by an independent laboratory may be submitted in lieu of the actual sample.

(e) The application fee for label approval of beer, ale, or malt liquor is \$25 for each size requested on the application.

(f) This section implements Alcoholic Beverage Code §101.67(e).

Note: Amendment Adopted: July 26, 2011; Effective Date: August 21, 2011

§45.86 Exhibiting Certificates to Representatives of the Commission.

It shall be unlawful for any person to fail or refuse to exhibit, upon demand or request by any authorized representative of the commission, the certificate of approval as issued by the United States Department of the Treasury or the administrator.

Note: Amendment Adopted: July 26, 2011; Effective Date: August 21, 2011

§45.87 Advertisement Defined.

The term "advertisement" as used in this subchapter includes any advertisement of a malt beverage through the medium of radio or television broadcast; or of newspaper, periodicals, or other publications; or of any other printed or graphic matter, including trade booklets, menus and wine cards, if such advertisement is in, or is calculated to induce sales in, this state; or is disseminated by mail; except that such term shall not include the following:

(1) Any label affixed to any container of malt beverage; or any coverings, cartons, or cases of containers of malt beverages used for sale at retail, or any written, printed, graphic, or other matter accompanying the container which constitutes a part of the labeling under this subchapter.

(2) Any editorial or other reading matter in any periodical or publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by any person engaged in business as a manufacturer, wholesaler, importer or retailer of a malt beverage.

Note: Readopted Without Changes and Effective: July 26, 2011

§45.88 Mandatory Statement.

Any advertisement shall contain a conspicuous statement of the class to which the product belongs, corresponding to the statement of class which is required to appear on the label of the product.

Note: Amendment Adopted: July 26, 2011; Effective Date: August 21, 2011

§45.89 Legibility of Requirements.

Statements required under §§45.72, 45.87, 45.88 and 45.90 of this title (relating to Authority and Scope; Advertisement Defined; Advertisement: Mandatory Statement; and Advertisement: Prohibited Statements) to appear in any written, printed, or graphic advertisement shall be in lettering or type of a size sufficient to render them both conspicuous and readily legible.

Note: Amendment Adopted: July 26, 2011; Effective Date: August 21, 2011

§45.90 Advertisement: Prohibited Statements.

- (a) General. An advertisement of malt beverages shall not contain the following:
- (1) any statement that is false or misleading in any material particular;

- (2) any statement that is disparaging of a competitor or his products;
 - (3) any statement, design, device or representation which is obscene or indecent;
 - (4) any statement, design, device, or representation of or relating to analyses, standards, or tests irrespective of falsity, which the administrator finds to be likely to mislead the consumer; or
 - (5) any statement, design, device, or representation of or relating to any guaranty, irrespective of falsity, which the administrator finds to be likely to mislead the consumer.
- (b) Statements inconsistent with labeling. The advertisement shall not contain any statement concerning a brand or lot of malt beverages that is inconsistent with any statement on the labeling thereof.
- (c) Curative and therapeutic effect. The advertisement shall not contain any statement, design, or device representing that the use of any malt beverage has curative or therapeutic effects if such statement is untrue in any particular, or tends to create a misleading impression.
- (d) Confusion of brands. Two or more different brands or lots of malt beverages shall not be advertised in one advertisement (or in two or more advertisements in one issue of a periodical or newspaper or in one piece of other written, printed, or graphic matter) if the advertisement is in any respect untrue.
- (e) Statements, seals, flags, coat of arms, crests, or other insignia, or graphic or pictorial or emblematic representations thereof, likely to mislead the consumer to believe that the product has been endorsed, made, or used by or produced for or under the supervision of or in accordance with, the specifications of the government, organization, family, or individual with whom such statement, seal, flag, coat of arms, crest, or insignia is associated, are prohibited.

Note: Amendment Adopted: July 24, 2012; Effective Date: August 26, 2012

§45.91 Exports.

These regulations shall not apply to malt beverages in bond, nor to malt beverages manufactured for sale exclusively outside this state.

Note: Readopted Without Changes and Effective: July 26, 2011

§45.94 Verification Regarding Use of Facilities.

On or before September 1 of each year, each holder of a permit issued under Alcoholic Beverage Code Chapter 12 or 13 or a license issued under Alcoholic Beverage Code Chapter 62 or 63 shall verify to the commission, on a form promulgated by the commission, that no brewing or manufacturing facility owned or controlled by the permit or license holder is used to produce malt beverages primarily for a specific Texas retailer or the retailer's Texas affiliates.

Note: New Rule Adopted: July 22, 2014; Effective: August 12, 2014

§45.96 Brewpubs.

(a) The purpose of this section is to implement Alcoholic Beverage Code §§5.39 (Regulation of Liquor Containers), 74.01 (Authorized Activities), 74.06 (Quality Standards), and 101.67 (Prior Approval of Malt Beverages), pursuant to the requirements of Alcoholic Beverage Code

§5.38 (Quality and Purity of Beverages) and the authority of Alcoholic Beverage Code §5.31 (General Powers and Duties).

(b) Labels.

(1) It shall be unlawful for any person to transport, sell, or possess for the purpose of sale in this state any malt beverage, directly or indirectly, or through an affiliate, or to remove from customs custody any malt beverage in containers unless such malt beverages are packaged, and such packages are marked, branded, and labeled in conformity with this subchapter.

(2) It shall be unlawful for any person to alter, mutilate, destroy, obliterate, or remove any mark, brand, or label upon malt beverages held for sale, except as authorized by law; provided, that the administrator may, upon written application, permit additional labeling or relabeling of malt beverages in containers if, in his judgment, the facts show that such additional labeling or relabeling is for the purpose of compliance with the requirements of this subchapter or of law.

(3) Application for permission to relabel shall be accompanied by two complete sets of the old labels and two complete sets of any proposed labels, together with a statement of the reasons for relabeling, the quantity and the location of the malt beverages, and the name and address of the person by whom they will be relabeled.

(4) A brewpub licensee may apply for and receive label approval on beer, ale, or malt liquor. The label may contain the brewpub licensee's name, tradename or trademark.

(5) No application for a label filed by a brewpub licensee shall be approved which:

(A) Indicates by any statement, design, device, or representation that the malt beverage is brewed or bottled for any retailer permittee or licensee or for any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it); or

(B) Includes the name, tradename, or trademark of any retailer permittee or licensee or for of any private club registration permittee (other than the brewpub licensee label applicant itself, an entity under common ownership with it, or an entity with the same name or tradename as it).

(c) Nothing in this subchapter or in Alcoholic Beverage Code Chapter 74 authorizes a brewpub licensee to engage in contract brewing or alternating brewery proprietorship arrangements, and its facilities may not be used to provide such arrangements or engage in such activities, which are authorized only for holders of permits under Alcoholic Beverage Code Chapters 12 or 13 and holders of licenses under Alcoholic Beverage Code Chapters 62 or 63.

Note: New Rule Adopted: July 22, 2014; Effective: August 12, 2014

SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

§45.101 Rebates, Coupons and Premium Stamps.

(a) It shall be unlawful for the holder of a license or permit to give or offer to give to any person premium stamps or any other type of inducement with the purchase of alcoholic beverages. The term "premium stamp" is hereby declared to include but not be limited to the following: exchange stamps, trade stamps, green stamps, gold stamps, and cash register premium tapes.

(b) No holder of a manufacturing, wholesale, or retail level license or permit may give any rebate or coupon redeemable by the public for the purchase of or for a discount on the purchase of any alcoholic beverage.

(c) No holder of a manufacturing, wholesale, or retail level license or permit may offer or give away with or without the purchase of any alcoholic beverage, a coupon redeemable for a rebate, cents-off or for any free non-alcoholic beverage item or product. A retailer, manufacturer, or wholesaler may, however, offer a discount, rebate, or cents-off coupon on any non-alcohol product except non-alcohol malt beverages and wines that he sells if it does not require the purchase of any alcoholic beverage.

(d) None of the above prohibits any retailer from offering a complimentary drink or drink discount as part of a meal package, a hotel package or any airline frequent flier program or in conjunction with any airline ticket purchase, provided, however, that no discount or complimentary beverage shall be brand identified or redeemed by a wholesaler or manufacturer.

§45.103 On-Premises Promotions.

(a) This rule is adopted to prohibit those practices by on-premise establishments that are reasonably calculated to result in excessive consumption of alcoholic beverages by consumers. Such practices constitute a manner of operation contrary to the public welfare, health and safety of the people in violation of §§11.61(b)(7) and 61.71(a)(17) of the Alcoholic Beverage Code.

(b) Excessive consumption of alcoholic beverages shall be determined by the standard of public intoxication articulated in §49.02 of the Penal Code.

(c) Licensees and permittees authorized to sell or serve alcoholic beverages for on-premises consumption may not:

(1) serve, sell, or offer to serve or sell, two or more open containers of alcoholic beverages at a price less than the number of containers actually sold or served;

(2) increase the volume of alcohol contained in a drink without increasing proportionally the price thereof;

(3) serve or offer to serve more than one free alcoholic beverage to any identifiable segment of the population during the course of one business day. Licensees and permittees may, however, without prior advertising, give one free alcoholic beverage to individual consumers in celebration of birthdays, anniversaries or similar events;

(4) sell, serve, or offer to sell or serve an undetermined quantity of alcoholic beverages for a fixed price or “all you can drink” basis;

(5) sell, serve, or offer to sell or serve, alcoholic beverages at a reduced price to those consumers paying a fixed “buy in” price;

(6) sell, serve, or offer to sell or serve, alcoholic beverages at a price contingent on the amount of alcoholic beverages consumed by an individual;

(7) reduce drink prices after 11:00 p.m.;

(8) sell, serve or offer to sell or serve more than two drinks to a single consumer at one time;

(9) impose an entry fee, cover or door charge for the purpose of recovering financial losses incurred by the licensee or permittee because of reduced or low drink prices;

(10) conduct, sponsor or participate in, or allow any person on the licensed premises to conduct, sponsor or participate in, any game or contest to be determined by the quantity of alcoholic beverages consumed by an individual or group, or where alcoholic beverages or reduced price alcoholic beverages are awarded as prizes;

(11) engage in any practice, whether listed in this rule or not, that is reasonably calculated to induce consumers to drink alcoholic beverages to excess, or that would impair the ability of the licensee or permittee to monitor or control the consumption of alcoholic beverages by consumers.

(d) The provisions of subsections (c)(1) through (c)(7) do not apply where:

(1) the permittee or licensee has entered into an agreement under the terms of which all or a portion of the licensed premises are utilized for a private party or a meeting of a particular organization; or

(2) a caterer's or other temporary permit or license is used for a private party or a meeting of a particular organization.

(e) Notwithstanding the provisions of (c)(1) through (c)(7) of this rule, licensees and permittees may:

(1) offer free or reduced-price food or entertainment at any time, provided the offer is not based on the purchase of an alcoholic beverage;

(2) include alcoholic beverages as part of a meal or hotel/motel package;

(3) sell, serve or deliver wine by the bottle to individual consumers during the sale or service of a meal to the consumer;

(4) sell, serve or deliver alcoholic beverages in pitchers, carafes, buckets or similar containers to two or more consumers at one time.

Note: New Rule Adopted: October 23, 2000; Effective: November 16, 2000

Note: Amended Rule Adopted: May 28, 2015; Effective: June 18, 2015

§45.105 Advertising.

(a) Mixed Beverage Establishments.

(1) This subsection relates to Alcoholic Beverage Code §108.07.

(2) Except as provided in this paragraph, the holder of any permit allowing the sale or service of mixed beverages may not advertise any price for an alcoholic beverage on any sign, billboard, marquee, or other display located on the licensed premises in such a manner that the price may be read by persons outside of the premises. It is an exception to the restriction in this paragraph if the holder of a food and beverage certificate places a menu on the exterior wall of the premises so that it can be read outside of the premises only by a pedestrian in close proximity to the menu. In order to qualify for the exception granted in this paragraph, the menu visible outside of the premises must be of the same size and in the same sized font as the menu presented to the establishment's customers, and must show both food and beverage prices.

(b) Private Clubs.

(1) This subsection relates to Alcoholic Beverage Code §§32.01(b), 108.51, 108.52 and 108.56.

(2) The holder of a private club registration permit or a private club exemption certificate must, in any advertising either directly or indirectly advertising the service of alcoholic beverages, whether or not by any specific brand name, state that the service of alcoholic beverages is only for persons who are members of the club.

(3) The holder of a private club registration permit or a private club exemption certificate may advertise any class of alcoholic beverages in an area where the sale of that class of alcoholic beverages is legal for on-premises consumption, provided no other provisions of the Alcoholic Beverage Code are violated.

(c) Mobile Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§108.51, 108.52 and 108.54.

(2) Mobile advertising on vehicles is not permitted unless it meets the definition of an “electric sign” in Alcoholic Beverage Code §108.51(3).

(3) Mobile advertising that meets the definition of an “electric sign” in Alcoholic Beverage Code §105.51(3) and that is funded directly or indirectly by upper-tier members may not be parked within 200 feet of a retail location for more than one hour, in order to prevent benefit to the retailer by drawing consumer traffic to the location.

(4) Mobile advertising that meets the definition of an “electric sign” in Alcoholic Beverage Code §108.51(3) may not be parked, maintained in, or driven through an area or zone where the sale of alcoholic beverages is prohibited.

(d) Internet Advertising.

(1) This subsection relates to Alcoholic Beverage Code §§102.07, 102.15 and 108.07.

(2) Retailers may advertise on the internet via their website or through third party advertising, unless the advertising is funded directly or indirectly by an upper-tier member.

(3) All retailer advertising on the internet must conform with the on-premises promotion restrictions of §45.103 of this subchapter, coupon and inducement restrictions of §45.101 of this Subchapter, and sweepstakes and giveaway restrictions of §45.106 of this Subchapter.

Note: New Rule Adopted: October 26, 2010; Effective: November 18, 2010

Note: Amended Rule Adopted: September 24, 2013; Effective October 24, 2013

§45.106 Sweepstakes and Games of Chance.

(a) This rule relates to §102.07 and §108.061 of the Alcoholic Beverage Code.

(b) For purposes of the above referenced provisions of the Alcoholic Beverage Code, sweepstakes shall include prizes that are awarded to consumers on the basis of random chance or on the basis of some knowledge or skill demonstrated by the sweepstakes participant, as determined by a judge or judges selected by the sponsor for that purpose.

(c) Members of the manufacturer and wholesaler tier (except holders of a distributor’s license) may offer a prize to a consumer if the offer is part of a promotional sweepstakes activity.

(d) A promotional permit holder contracted by the holder of a manufacturer’s permit may sponsor a sweepstakes on behalf of the manufacturer.

(e) A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

(f) Alcohol may not be awarded as a prize.

(g) A person must be 21 years of age or older to enter a sweepstakes promotion.

(h) An upper tier sponsored sweepstakes entry or contest may not be retailer specific and prizes may not be awarded on a retailer’s premise.

(i) Entry codes or entry forms on or in the caps, corks, labels, case cartons, or other materials packaged with, within, or printed on any packages of alcoholic beverages may be used as an entry mechanism provided:

(1) such mechanisms do not grant a consumer’s right to claim winnings; and

(2) there is at the point of sale or on product packaging conspicuously displayed alternate means of entry available to the consumers.

(j) All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverages.

(k) Except as specifically authorized by this section, and the Alcoholic Beverage Code, §102.07 and §108.061, it shall be unlawful for any person to sell or distribute any alcoholic beverage in a container bearing any label, crown, or covering upon which there is printed or marked any word, letter, figure, symbol or character representative of or suggesting any game of chance, or to use or display any advertising so printed or marked.

(l) Any sweepstakes promotion that includes prizes that are to be awarded on the basis of some knowledge or skill demonstrated by the sweepstakes participant may not be held or conducted on the licensed premises of a retailer or private club. Sweepstakes sponsors may, with the retailer's permission, place sweepstakes entry forms on retail premises.

Note: Amendments Adopted: January 23, 2006; Effective Date: February 23, 2006

§45.107 Alcoholic Beverages Utilized for Cooking Purposes at On-Premise Locations.

(a) Wine and Beer On-Premises Retailers.

(1) This subsection is promulgated pursuant to Alcoholic Beverage Code §25.09.

(2) Any alcoholic beverage that is in excess of 17 percent alcohol by volume and is used by wine and beer on-premises retailers for cooking purposes must be individually labeled as "For Cooking Use Only".

(3) All alcoholic beverages in excess of 17 percent alcohol by volume used by wine and beer on-premises retailers for cooking purposes must be stored separately from alcoholic beverages that are legal for sale on the premises by such retailers.

(4) No alcoholic beverage in excess of 17 percent alcohol by volume that is designated by wine and beer on-premises retailers for cooking purposes may be sold, served or consumed in liquid form by staff or customers of the retailer.

(5) All receipts for the purchase by wine and beer on-premises retailers of alcoholic beverages in excess of 17 percent alcohol by volume must be retained on the premises until the bottle is empty and disposed of.

(b) Mixed Beverage Permittees.

(1) This subsection is promulgated pursuant to Alcoholic Beverage Code §28.06.

(2) Alcoholic beverages used for cooking purposes may be purchased from, tax stamped by and invoiced by a Local Distributor's Permittee or may be purchased at retail from a licensed retailer. Alcoholic beverages purchased at retail without a tax stamp may not be served or sold in liquid form.

(3) An alcoholic beverage purchased for cooking purposes at retail without a tax stamp must be individually labeled as "For Cooking Use Only".

(4) All alcoholic beverages purchased for cooking purposes at retail without a tax stamp must be stored separately from alcoholic beverages purchased from, tax stamped by and invoiced by a Local Distributor's Permittee.

(5) Alcoholic beverages purchased for cooking purposes at retail without a tax stamp may not be sold, served or consumed in liquid form by staff or customers.

(6) All receipts for the purchase of alcoholic beverages purchased for cooking purposes at retail without a tax stamp must be retained on the premises until the bottle is empty and disposed of.

Note: New Rule Adopted: October 26, 2010; Effective: November 18, 2010

§45.109 Restocking and Rotation of Alcoholic Beverages.

(a) General.

(1) This rule is enacted pursuant to §102.20 of the Alcoholic Beverage Code.

(2) This rule applies to members of the wholesale tier and those members of the manufacturing tier authorized to sell to retailers for all beverages.

(b) Restocking. Licensees and permittees subject to this rule may, at retail premises, with permission of the retailer, stock, rotate, affix prices, and reset or rearrange alcoholic beverages they sell, provided products of other industry members are not altered or disturbed.

(c) Licensees and permittees subject to this rule may, at retail premises, with permission of the retailer, organize and construct displays of alcoholic beverages they sell. Notwithstanding the provisions of subsection (b) of this section, products of other industry members, arranged in floor or end cap displays, may be moved, with the permission of the retailer, in order to perform the services allowed by this subsection. Displays constructed under this subsection must be accessible to the consumer.

(d) The activities permitted by paragraphs (b) and (c) of this rule may only be performed during the hours when the sale or delivery of specific alcoholic beverages are legal and may also be performed for malt beverages and wine from 5:00 a.m. to 12:00 noon on Sunday.

(e) Licensees and permittees subject to this rule may provide shelf plans or schematics to retailers.

Note: Amendment Adopted: August 24, 1998; Effective: September 17, 1998

§45.110 Inducements.

(a) General. This section is enacted pursuant to Alcoholic Beverage Code §§102.04, 102.07, 102.12, 102.15 and 108.06.

(b) Unless otherwise specified, this section applies to members of the manufacturing and wholesale tiers for all alcoholic beverages.

(c) Inducements. Notwithstanding any other provision of these rules, practices and patterns of conduct that place retailer independence at risk constitute an illegal inducement as that term is used in the Alcoholic Beverage Code. Examples of unlawful inducements are:

(1) purchasing or renting shelf, floor or warehouse space from or for a retailer;

(2) requiring a retailer to purchase one product in order to be allowed to purchase another product at the same time;

(3) providing or purchasing, in whole or in part, any type of advertising benefitting any specific retailer, if the advertising is a result of unauthorized activity;

(4) furnishing food and beverages, entertainment or recreation to retailers or their agents or employees except under the following conditions:

(A) the value of food, beverages, entertainment and recreation shall not exceed \$500.00 per person on any one occasion; and

(B) food, beverages, entertainment and recreation provided may only be consumed or enjoyed in the immediate presence of both the providing upper tier member and the receiving retail tier member; and

(C) in the course of providing food, beverages, entertainment or recreation under this rule, upper tier members may only furnish ground transportation.

(D) food, beverages, recreation and entertainment may also be provided during attendance at a convention, conference, or similar event so long as the primary purpose for the attendance of the retailer at such event is not to receive benefits under this section.

(E) each upper tier member shall keep complete and accurate records of all expenses incurred for retailer entertainment for two years.

(5) furnishing of service trailers with equipment to a retailer;

(6) furnishing transportation or other things of value to organized groups of retailers.

Members of the manufacturing and distribution tiers may advertise in convention programs, sponsor functions or meetings and other participate in meetings and conventions of trade associations of general membership; or

(7) except as otherwise allowed under §45.96 of this chapter, marking, branding or labeling a malt beverage with:

(A) the tradename or trademark of any retailer permittee or licensee or any private club registration permittee; or

(B) a tradename or trademark that is owned or licensed by, or is exclusively used by any retailer permittee or licensee or any private club registration permittee.

(d) Criteria for determining retailer independence. The following criteria shall be used as a guideline in determining whether a practice or pattern of conduct places retailer independence at risk. The following criteria are not exclusive, nor does a practice need to meet all criteria in order to constitute an inducement.

(1) The practice restricts or hampers the free economic choice of a retailer to decide which products to purchase or the quantity in which to purchase them for sale to consumers.

(2) The retailer is obligated to participate in a program offered by a member of the manufacturing or wholesale tier in order to obtain that member's product.

(3) The retailer has a continuing obligation to purchase or otherwise promote the industry member's product.

(4) The retailer has a commitment not to terminate its relationship with a member of the manufacturing or wholesale tier with respect to purchase of that member's products.

(5) The practice involves a member of the manufacturing or wholesale tier in the day-to-day operations of the retailer. For example, the member controls the retailer's decisions on which brand of product to purchase, the pricing of products, or the manner in which the products will be displayed on the retailer's premises.

(6) The practice is discriminatory in that it is not offered to all retailers in the local market on the same terms without business reasons present to justify the difference in treatment.

Note: Amendment Adopted: November 23, 1998; Effective: December 20, 1998.

Note: Amendment Adopted: July 22, 2014; Effective: August 12, 2014

§45.111 Advertising Signs at Charitable or Civic Events.

(a) This rule is enacted pursuant to §108.53(d) of the Alcoholic Beverage Code.

(b) At a charitable or civic event of a temporary nature, members of the alcoholic beverage industry may place signs or other advertising materials indicating their participation in, or sponsorship of, the charitable or civic event.

(c) It is the intent of this rule that any proceeds from signs advertising alcoholic beverages be received directly by the charity or civic endeavor.

(d) Notwithstanding any other provision of the Alcoholic Beverage Code, signs at a charitable or civic event of a temporary nature may be within 200 feet of the licensed premises of a retailer of alcoholic beverages. No consideration of any kind may be given directly or indirectly, in any form or degree, to any retailer for the placement of any sign.

Note: Rule Adopted: August 24, 1998; Effective: September 17, 1998

§45.112 Use of Brand Names and Insignia by Industry.

(a) This section is promulgated pursuant to Alcoholic Beverage Code, §102.07 and §108.03.

(b) Advertising of an alcoholic beverage on caps, regalia or uniforms worn by an employee of a manufacturer, distributor, distiller or winery, shall be limited to:

(1) the name and address of the manufacturer, distributor, distiller or winery; and

(2) the brand names, logos and slogans that appear on the container labels approved by the administrator for such alcoholic beverage.

(c) Advertising of an alcoholic beverage on caps, regalia or uniforms worn by a participant in any game, sport, athletic contest or revue, when the participant is sponsored by a manufacturer, distributor, distiller or winery, shall be limited to:

(1) the name and address of the manufacturer, distributor, distiller or winery; and

(2) the brand names, logos and slogans that appear on the container labels approved by the administrator for such alcoholic beverage.

(d) Business cards and stationery bearing brand insignia may be used by licensees and permittees who are not retail licensees and permittees. Such business cards and stationery may contain:

(1) the name and address of the user;

(2) the name and address of the firm represented;

(3) the brand insignia of any alcoholic beverage which the firm represents or the user is licensed to sell; and

(4) any other logo, slogan or trademark that appears on the approved label for such alcoholic beverage, or which slogan or trademark has otherwise been approved by the administrator.

(e) Advertising of alcoholic beverages on the equipment, service or delivery vehicles of a member of the manufacturing or wholesale tiers shall be limited to the brand names or logos of the alcoholic beverages sold or represented by the manufacturer, local distributor or wholesaler, firm names and addresses of the manufacturer, local distributor or wholesaler, and such slogans as have been approved by the administrator.

(f) Menu cards, folders or sheets advertising beer, ale or malt liquor may be furnished to a holder of a retail license or permit by an upper-tier member, if such menu cards, folders or sheets, at the time of their delivery to the retailer, do not list any food or drink item offered for sale by the retailer. The holder of the retail license or permit shall bear all costs of listing any such food or drink item on the menu cards, folders or sheets.

Note: Amended Rule Adopted: October 26, 2010; Effective: November 18, 2010

§45.113 Gifts, Services and Sales.

(a) General.

(1) This rule is promulgated pursuant to §108.04 of the Alcoholic Beverage Code to relax certain restrictions and prohibitions set forth in §§102.14, 102.15 and 108.06 of the code.

(2) This rule applies to buyers, sellers and consumers of beer.

(b) Gifts to Consumers. Manufacturers and distributors may furnish novelty items and beer to consumers.

(1) Novelty items are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) Such items may not exceed a value of \$1.00 per unit wholesale cost.

(3) Beer may be purchased for consumers provided that such beverages are consumed at retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and distribution tier participating in promotions authorized by this paragraph must hold an agent's beer license.

(4) The administrator may grant specific approval for sampling tests designed to determine consumer taste preferences. The administrator may impose such conditions as he/she deems necessary.

(5) Manufacturers and distributors may, as a social courtesy, give beer and other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Promotional items sold to retailers. Distributors and members of the manufacturing tier authorized to sell to retailers may sell promotional items to retailers.

(1) Promotional items are things designed to promote a specific product or brand and are further designed for use by the consumer, either on or off the retailer's premises.

(2) Promotional items sold must bear a manufacturer's logo, brand or product name.

(3) Promotional items may not be sold for less than the item manufacturer's regularly published wholesale price. Payment must be in cash, paid on or before delivery.

(d) Signs provided to retailers.

(1) Distributors and members of the manufacturing tier authorized to sell to retailers may furnish, give or sell interior signs to retailers.

(2) A sign is a thing whose primary purpose is the advertisement of a brand or product or the price thereof.

(3) A sign furnished by a distributor or authorized member of the manufacturing tier may not bear the name, logo or trademark of a specific retailer.

(4) No manufacturer or distributor may paint, improve or remodel a retailer's buildings or parts of buildings, inside or out, or finance any improvements thereto.

(e) Services provided to retailers. Distributors and members of the manufacturing tier may:

(1) service and repair promotional items and signs furnished or sold under the provisions of this rule;

(2) furnish meeting rooms to retailers on the manufacturer's or distributor's licensed premises. In no event shall anything be furnished to retailers except samples of the manufacturer's or distributor's product or food provided as a courtesy in accompaniment to such samples; and

(3) furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, coil cleaning service necessary for the proper delivery and dispensing of draft malt beverages.

(f) Gifts to unlicensed organizations. Manufacturers and distributors may donate money, beer or other things of value to unlicensed civic, religious or charitable organizations.

(1) Beer may only be given for consumption in a wet area.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) Distributors and manufacturers authorized to sell to retailers may furnish draft beer dispensing equipment for use at temporary events, provided that such equipment may not be given in exchange for an exclusive sales privilege.

(4) Manufacturers, distributors and their employees and agents may not serve or dispense malt beverages at temporary events.

(5) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

Note: Amended Rule Adopted: October 22, 2012; Effective: November 15, 2012

§45.117 Gifts and Advertising Specialties.

(a) General.

(1) This section is enacted pursuant to Alcoholic Beverage Code §§102.07(b), 102.07(d), 108.042 and 109.58.

(2) This section applies to buyers, sellers and consumers of liquor.

(b) Gifts to consumers. Manufacturers and wholesalers may furnish gifts to consumers.

(1) The gifts shall be offered consistently with the restrictions contained in Alcoholic Beverage Code §102.07(d).

(2) The items given may be novelty items of limited value. Such items shall be designed to promote a specific product or brand and may have a utilitarian function in addition to product promotion.

(3) Liquor may be purchased for consumers provided that such beverages are consumed on retail licensed premises in the presence of the purchaser. Such purchases shall not be excessive. All members of the manufacturing and wholesaler tiers participating in promotions authorized by this paragraph must hold an agent's permit or manufacturer's agent's permit.

(4) Manufacturers and wholesalers may, as a social courtesy, provide liquor or other things of value to unlicensed persons who are not employed or affiliated with the holder of a retail license or permit.

(c) Gifts to Retailers. Manufacturers and wholesalers may furnish advertising specialties to retailers.

(1) Advertising specialties are things designed to advertise or promote a specific product or brand. Such items may have a utilitarian function in addition to product promotion.

(2) The total cost of all advertising specialties furnished to a retailer shall not exceed \$101 per brand per calendar year. Dollar limitations may not be pooled to provide a retailer with advertising specialties in excess of the maximum permitted under this subsection.

(d) Service provided to retailer.

(1) Manufactures and wholesalers may service and repair items furnished to retailers under the provisions of this rule.

(2) Manufactures and wholesalers may furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except

samples of the manufacturer's or wholesaler's product or food provided as a courtesy in accompaniment to such samples.

(3) The holder of a wholesaler's, general class B wholesaler's, local class B wholesaler's permit, or the permit holder's agent, may furnish and install shanks, washers, hose and hose connections, tap rods, tap markers, and coil cleaning service necessary for the proper delivery and dispensing of wine.

(e) Gifts to Unlicensed Organizations. Manufacturers and wholesalers may donate money, liquor or other things of value to unlicensed civic, religious, or charitable organizations.

(1) Liquor may only be given for consumption in wet areas.

(2) Advertising of events sponsored by organizations receiving donations shall include promotion of the organization sponsor or cause in a manner at least equal to or greater than the advertising of the industry donor.

(3) "Unlicensed" means not having a permit or license authorizing the sale or service of alcoholic beverages.

Note: Amended Rule Adopted: July 26, 2011; Effective: August 21, 2011

§45.120 Co-packaging of Alcoholic Beverage.

(a) This section relates to Alcoholic Beverage Code §102.07(a)(5) and §108.035.

(b) As used in this section:

(1) "Co-pack" means a package:

(A) originally bundled and supplied by a manufacturer, distiller, brewer, rectifier, wholesaler, class B wholesaler, winery or wine bottler (or an agent, employee or servant of such);

(B) containing an alcoholic beverage and another item;

(C) where the package is designed to be delivered intact to the ultimate consumer; and

(D) where the additional items have no value or benefit to the retailer other than that of having the potential of attracting purchases and promoting sales.

(2) "Naked bottle" means an alcoholic beverage sold by a wholesaler that is similar in all regards to the alcoholic beverage contained in a co-pack sold by that wholesaler, except that it is not packaged with any other item.

(c) If any alcoholic beverage is sold to a retailer as a "co-pack", the retailer may not separate the other packaged item and sell it by any means other than the way it was originally packaged when received.

(d) In order to demonstrate that a non-alcoholic beverage item in a co-pack has no unlawful value or benefit to the retailer, a retailer must price and sell a co-pack at a cost/price differential not to exceed the cost/price differential at which the retailer prices and sells a naked bottle received from the same wholesaler.

(e) Nothing in this section shall preclude a supplier from differentiating in the price of a naked bottle and co-pack during the packaging phase of a co-pack by adding cost to the co-pack and increasing the baseline price of the co-pack.

(f) A retailer may not be forced, induced or persuaded to purchase a prescribed number of co-packs in order to purchase naked bottles, nor may a retailer be forced, induced or persuaded to purchase a prescribed number of naked bottles in order to purchase co-packs.

Note: Amended Rule Adopted: October 26, 2010; Effective: November 18, 2010

Note: Amended Rule Adopted: September 24, 2013; Effective: October 24, 2013

SUBCHAPTER E. REGULATION OF CREDIT TRANSACTIONS

DIVISION 1. DELINQUENT LIST

§45.121 Credit Restrictions and Delinquent List for Liquor.

(a) Purpose. This section implements §§102.32, 11.61(b)(2), 11.66, and 109.64 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions. For purposes of this section, the following terms have the definitions given in this subsection.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.

(3) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason, on or before the fourth business day after the date that payment is due under §102.32(c) of the Code, or is returned to the seller as unpaid for any reason after the fourth business day after the date payment is due under §102.32(c) of the Code. A delinquent payment also occurs in the event the retailer fails to submit payment on or before the fourth business day after the date that payment is due under §102.32(c) of the Code.

(4) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(5) Incident--A single delinquent payment. Failure to submit payment also constitutes an incident.

(6) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees. For purposes of this section, the holder of a winery permit issued under Chapter 16 of the Code is a retailer when the winery permit holder purchases wine from the holder of a wholesaler's permit issued under Chapter 19 of the Code for resale to ultimate consumers in unbroken packages. For purposes of this section and pursuant to Code §109.64, the holder of an industrial permit under Chapter 38 of the Code is treated in the same manner as a retailer when the industrial permit holder makes a bulk purchase of liquor from the holder of a wholesaler's permit issued under Chapter 19 of the Code.

(7) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor permittee and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license expires or is cancelled for cause, voluntarily cancelled, suspended or placed in suspension while on the delinquent list will be disqualified from applying for or being issued an original or renewal permit or license until all delinquent payments are satisfied. For purposes of this section, the Retailer includes all persons who were owners, officers, directors and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically to the commission on the commission's web based reporting system at www.tabc.texas.gov.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission on or before the date the delinquent list is published.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquent List until the Release Date on the Delinquent List, or until the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section is prohibited from purchasing or accepting delivery of alcoholic beverages from any source at any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic or paper written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) A disputed delinquent payment will not be removed from the delinquent list until documents and/or other records tending to support the Retailer's dispute are submitted to the commission.

(3) The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.texas.gov>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth business day after the 25th day of the month for purchases made from the 1st to the 15th day of that month and for which payment was not received by the fourth business day after the 25th day of that month. Except as otherwise specified in subsection (k) of this section, the Delinquent List will be published on the fifth business day after the 10th day of the next month for purchases made between the 16th and the last day of the preceding month and for which payment was not received by the fourth business day after the 10th day of the next month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated hourly to reflect reports of payments submitted.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent List that would otherwise fall on a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday (as published at www.frb services.org/holidayschedules/index.html) will be the next regular business day. For purposes of this section, a business day means a day which is not a Saturday, a Sunday, a state or federal holiday (unless the commission is required to be open for business), or a standard Federal Reserve bank holiday (as published at <http://www.frb services.org/holidayschedules/index.html>). A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed received when the authorized individual takes possession of the payment.

Note: Amended Rule Adopted: January 24, 2013; Effective: March 1, 2013

Note: Amended Rule Adopted: November 19, 2013; Effective: December 15, 2013

DIVISION 2. CASH LAW

§45.131 Payment Regulations for Certain Malt Beverages.

- (a) Purpose. This rule implements §102.31 of the Texas Alcoholic Beverage Code (Code).
- (b) Definitions. For purposes of this section, the following terms have the meaning given in this subsection.
 - (1) Cash equivalent--A financial transaction or instrument that is not conditioned on the availability of funds upon presentment, including, money order, cashier's check, certified check or completed electronic funds transfer.
 - (2) Cash payment--United States Currency and coins, or a cash equivalent financial transaction or instrument.
 - (3) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in one or more incidents to one or more Sellers.
 - (4) Incident--One financial transaction or instrument made by a Retailer that fails to provide payment in full for malt beverages delivered by a Seller to the Retailer. Failure to submit payment also constitutes an incident.
 - (5) Malt beverages--Ale or malt liquor containing more than four percent of alcohol by weight and beer containing one-half of one percent or more of alcohol by volume and not more than four percent alcohol by weight.
 - (6) Retailer--A license or permit holder and their agents, servants and employees, authorized to sell malt beverages for on or off premise consumption to an ultimate consumer.
 - (7) Seller--The holder of a local distributor's permit when selling malt beverages to a mixed beverage or daily temporary mixed beverage permittee, the holder of a brewpub license when selling beer, the holder of a general, local or branch distributor's license, and the holder of a manufacturer's self distribution license, and their agents, servants, employees, or a subsidiary or affiliate, authorized to sell malt beverages to a retailer.
- (c) Invoices. A delivery of malt beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the malt beverages, the price, the place and date of delivery.
 - (1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of malt beverages and accuracy of invoice and by the Seller to acknowledge payment was received on or before the delivery.
 - (2) The Seller and Retailer must retain invoices for four years from the date of delivery.
 - (3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise, as long as the records can be accessed from the licensed premise and made available to the commission during normal business hours.
- (d) Cash Payment Violation. A Retailer who fails to make a cash payment to a Seller for the delivery of malt beverages violates this section unless an exception applies.
 - (1) A Retailer who violates this section must pay the amount due, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.
 - (2) For purposes of this section, the Retailer includes all persons who are or were owners, officers, directors, managers or shareholders of the Retailer at the time a cash payment violation occurs.
- (e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation must be submitted electronically on the forms provided on the commission's web based reporting system at www.tabc.texas.gov.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.

(4) A Seller who fails to report a violation as required by this subsection is in violation of this section.

(f) Exception. A Retailer who wishes to dispute a violation of this section, based on a good faith dispute between the Retailer and the Seller may submit supporting documents and a detailed written statement to the commission with a copy to the Seller explaining the basis of the dispute.

(1) The written statement must be submitted with documents and/or other records tending to support the Retailer's dispute, which may include:

(A) a copy of the front and back of the cancelled check of Retailer showing endorsement and deposit by Seller;

(B) bank statement or records of bank showing funds were available in the account of Retailer on the date the check was delivered to Seller; and

(C) bank statement or records showing:

(i) bank error or circumstances beyond the control of Retailer caused the check to be returned to Seller unpaid; or

(ii) the check cleared Retailer's account and funds were withdrawn from Retailer's account in the amount of the check.

(2) The Retailer must immediately submit a notice of resolution of a dispute to the commission under this subsection.

(g) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under the Code for one or more violations of this section. The commission may consider whether a violation is the result of an event or incident when initiating an action under this subsection.

(h) Calculation of Time. Sundays and legal holidays are not counted in determining time periods under this section.

Note: Amended Rule Adopted: November 19, 2013; Effective: December 15, 2013

CHAPTER 50. ALCOHOLIC BEVERAGE SELLER SERVER TRAINING

SUBCHAPTER A. GENERAL AND ADMINISTRATIVE PROVISIONS

§50.1 Purpose and Authority.

This chapter implements Texas Alcoholic Beverage Code §106.14, which provides the commission with authority to adopt rules establishing requirements for approved seller training programs.

§50.2 Definitions.

Words used in this chapter have their common and ordinary meaning unless they are given a specific meaning in the code or are defined in this section.

(1) **Applicant**--The individual and/or each owner, officer, director, manager or trainer of a legal entity who applies to the commission for a certificate under this chapter.

(2) **Branch Seller Server School Certificate**--A certificate issued by the commission to the holder of a Primary Seller Server School Certificate granting the same authority as the Primary certificate but at a site that is designated on the Branch Certificate and that is different from that designated on the Primary certificate.

(3) **Break**--An interruption in a course of instruction occurring after the lesson introduction and before the lesson summation.

(4) **Classroom-Based Seller Server School Certificate**--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either an In-House Seller Server School Certificate or an Internet-Based Seller Server School Certificate.

(5) **Commission-Approved Personal Identification Number**—A social security number, an individual taxpayer identification number (ITIN), an alien registration number (“A” number), or the IV case number from a machine-readable immigrant visa (MRIV).

(6) **Course of Instruction**--The mandatory curriculum and the optional curriculum used to teach a seller server certificate course.

(7) **Incomplete application**--An application that fails to include all facts, disclosures, documents, statements, authorizations, signatures and fees required by this chapter or requested by the commission for issuance of a certificate.

(8) **In-House Seller Server School Certificate**--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school sponsored or operated by a retail permittee or licensee and that has authority under this chapter to offer instruction on either a classroom basis or a computer basis and to issue seller server certificates.

(9) **Internet-Based Seller Server School Certificate**--A Primary or Branch Seller Server School Certificate issued by the commission under this chapter to a school offering an interactive course on the internet or intranet that:

(A) has authority under this chapter to offer instruction and issue seller server certificates; and

(B) does not qualify for either a Classroom-Based Seller Server School Certificate or an In-House Seller Server School Certificate.

(10) **Mandatory Curriculum**--The curriculum provided by the commission that must be used by a certified school teaching a seller server certificate course.

(11) **Optional Curriculum**--Any curriculum not provided by the commission that is used by a school to teach a seller server certificate course.

(12) **Primary Seller Server School Certificate**--A certificate issued by the commission under this chapter granting authority to:

(A) offer instruction and maintain records at the school’s principal site designated on the primary certificate; and

(B) issue seller server certificates.

(13) **School**--The holder of a Primary or Branch Seller Server School Certificate issued

by the commission.

(14) Seller Server Certificate--A certificate issued to an individual who completes a course of instruction offered by a school and who passes the Commission Standard Competence Test.

(15) Seller Server Certificate Course--A class providing instruction in the sale, service, dispensing, delivery and consumption of alcoholic beverages to or by persons in private clubs, minors or intoxicated persons, and that is designed to enable students to pass the Commission Standard Competence Test and receive a seller server certificate.

(16) Trainer--An individual who holds a Seller Server Trainer Certificate issued under this chapter.

Note: Amended Rule Adopted: November 19, 2013; Effective Date: December 12, 2013

SUBCHAPTER B. MANDATORY CURRICULUM AND COURSE OF INSTRUCTION

§50.3 Mandatory Course Curriculum.

(a) The mandatory curriculum is created by and updated by the commission or under a work-for-hire contract. Each certified school is provided with information and security access to the commission's secure portal when an original certificate or renewal is issued. Schools that are unable to access or download the mandatory curriculum must submit a written request to have the curriculum provided in an alternate format. The commission will not provide paper copies of the mandatory curriculum.

(b) The commission claims a copyright in the mandatory curriculum. The mandatory curriculum may not be sold and may not be used in whole or in part without including the commission's claim of copyright.

(c) Each certified school is granted access and specific rights of use to the mandatory curriculum and all updates as part of the school licensing fee.

(1) The copyright license provides unlimited use of the mandatory curriculum for authorized purposes only.

(2) The commission's claim of copyright must be included in all written and visual materials from the mandatory curriculum.

(3) Any sale or use of the mandatory curriculum for unauthorized purposes is a violation of this chapter.

(d) Upon receiving notice from the commission of a change to the mandatory curriculum, a school has thirty calendar days to implement the change.

(e) These topics in the mandatory curriculum must be included in the course of instruction offered by each school.

(1) The definition of intoxication.

(2) The law pertaining to intoxicated persons.

(3) The law pertaining to minors.

(4) The law pertaining to proper identification.

(5) How to detect intoxication.

(6) How to detect minors.

(7) How to detect improper identification.

(8) How to monitor customer behavior.

(9) How to use a chart showing the effects of alcohol based on: the size, type and

number of drinks; body weight; the sex of the drinker; and the passage of time.

(10) The dangers of alcohol poisoning.

(11) Intervention pertaining to intoxication.

(12) Intervention pertaining to minors.

(13) Sanctions for employee violations.

(14) Any other topics identified by the commission as appropriate, giving due consideration to developments in the law, society, and the alcoholic beverage industry.

(f) In developing the original mandatory curriculum pursuant to subsection (a) of this section, the commission will conduct work group meetings with members representing a cross-section of interested parties. After receiving input from the work group, the staff of the commission will present its recommended mandatory curriculum to the commissioners at an open meeting. After the original mandatory curriculum is developed, the commission will review it after every session of the legislature to determine if changes are required. If changes to the curriculum are required simply to update it to reflect legislative changes, the commission will make such changes and post notice in the Texas Register and on the commission's website that such changes have been made. If the commission wants to make other changes to the curriculum, it will publish notice of such intent in the Texas Register and on the commission's website.

§50.4 Commission Approval of Classroom-Based Course of Instruction.

(a) Each classroom-based school must provide a course of instruction using the content and sequence of topics contained in the mandatory curriculum. Subject to the requirements of subsection (c), the course of instruction may include optional material.

(b) All classroom-based training materials and courses of instruction must be submitted to the commission for approval.

(1) A classroom-based course of instruction must be paced to provide a minimum of 120 minutes of active instruction and student participation in the mandatory curriculum.

(2) The 120 minute requirement excludes time taken for breaks and the administration of the Commission Standard Competence Test.

(3) The 120 minute requirement is based on a 6th grade comprehension and reading skills level.

(4) The commission must approve a course of instruction before it can be offered by a school.

(c) Upon approval by the commission, a classroom-based school may present a course of instruction including optional material in addition to the mandatory curriculum if:

(1) a request for approval of the optional material is submitted to the commission, with any alteration of the mandatory curriculum and all optional materials clearly identified;

(2) the entire proposed course of instruction is submitted with the request, showing the sequence in which the mandatory curriculum and the optional material will be presented;

(3) the optional material will not alter the scope or effectiveness of the mandatory curriculum; and

(4) additional time is added to the course of instruction to ensure that 120 minutes are devoted entirely to the mandatory curriculum.

(d) A classroom-based school must file a revised course of instruction implementing a change to the mandatory curriculum within 30 days after receiving notice of the change.

§50.5 Commission Approval of Internet-Based Course of Instruction.

(a) All internet-based training materials and instruction must be submitted and approved by the Commission prior to use.

(1) Printed screenshots meeting the language comprehension levels required by this section and sequenced and presented as a complete course of instruction must be provided to the commission.

(2) Access to the school's web address and secured portal must be made available to the commission and the entire course of instruction offered to students must be provided free of charge to the commission.

(b) An internet-based course of instruction shall be presented at a 6th grade fluency level of 180 words per minute and must be equivalent to 120 minutes of time.

(c) An internet-based school may provide optional instruction in addition to the mandatory curriculum upon approval by the commission if:

(1) a request for change is submitted to the commission, with all alterations of the mandatory curriculum and all optional materials clearly identified;

(2) the entire proposed course of instruction is submitted with the request, and, if the proposed sequence differs from the mandatory curriculum, a list is included showing where in the proposed sequence each topic in the mandatory curriculum will be presented; and

(3) the changes to the sequence and the optional material will not alter the scope or effectiveness of the mandatory curriculum.

(d) An internet-based school must file a revised course of instruction implementing a change to the mandatory curriculum within 30 days after receiving notice of the change.

§50.6 Management of Classroom-Based Course of Instruction.

(a) No more than 50 students may attend a session.

(b) A student who misses more than 10% of the required 120 minutes of class instruction shall not be allowed to take the Commission Standard Competence Test and may not be given a Seller Server Certificate based on his attendance at that session.

(c) No alcoholic beverage may be consumed by anyone attending or teaching the session, during the session or during breaks.

(d) Unless prior approval is received from the commission upon request by the school, each session must be presented in a continuous block of instruction. Instruction may be interrupted by brief breaks, but they must be limited in number and duration. Time spent in a break or taking the Commission Standard Competence Test shall not be included in the 120-minute mandatory curriculum attendance requirement.

(e) A school seeking approval to offer a course of instruction on a unit basis rather than as a continuous block of instruction must define what material will be taught in each unit. The units must be offered in the sequence of the mandatory curriculum.

(1) A student must attend all of the units necessary to receive instruction in the 120-minute mandatory curriculum before he is allowed to take the Commission Standard Competence Test.

(2) At the conclusion of a unit, the student must answer five questions on the material in that unit. A student may not receive instruction in the next unit if the student:

(A) answers more than one question incorrectly; or

(B) has not been in attendance for the complete unit.

- (3) The questions on a unit test may be short answer, multiple choice, or a combination of those methods.
- (4) If a student incorrectly answers more than one question on a unit test, the student must attend and complete that unit again before being retested.
- (5) During a unit retest, the student must be asked questions that are different from those he was previously asked.
- (6) As long as different questions are asked and the student has attended the unit after each failed test, a school may decide how many times the student may be retested on a unit.
- (f) The Commission Standard Competence Test shall be administered to each student immediately following the conclusion of instruction at the class he attends. No test may be administered at any other place or time.
- (g) The Commission Standard Competence Test shall be administered on a closed-book basis.
- (h) A student must correctly answer at least 70% of the questions asked on the Commission Standard Competence Test administered to him to be eligible to receive a seller server certificate.
- (i) A student who does not correctly answer 70% of the questions asked may be immediately retested once. If the student does not correctly answer 70% of the questions asked on the retest, the student must repeat the course in full.

§50.7 Management of Internet-Based Course of Instruction.

- (a) An internet-based school must verify a student's identity.
 - (1) To verify the student's identity, the school must ask each student a minimum of ten personal validation questions. Students may have no more than 60 seconds to respond to a personal validation question. If a student answers more than 30% of the validation questions incorrectly, the student must be dropped from the course.
 - (2) In lieu of the validation method required in paragraph (1), a school may use another validation method that has been approved by the commission upon request by that school.
- (b) A student may be allowed to reenter a course through the use of a username and password, or by other means approved by the commission that are as effective as password verification.
- (c) An internet-based school may present the course of instruction on a unit basis that is approved by the commission.
 - (1) At the conclusion of a unit, the student must answer five questions on the material in that unit. A student may not proceed to the next unit if the student:
 - (A) answers more than one question incorrectly; or
 - (B) has not viewed all of the multimedia components of a unit.
 - (2) Questions on a unit test must be of a difficulty level that a student cannot correctly answer them without having viewed the material in that unit. The questions on a unit test may be short answer, multiple choice, or a combination of those methods.
 - (3) If a student incorrectly answers more than one question on a unit test, the student must restart and complete that unit again before being retested.
 - (4) During a unit retest, the student must be asked questions that are different from those he was previously asked.
 - (5) As long as different questions are asked and the student has restarted and completed the unit after each failed test, a school may decide how many times the student may

be retested on a unit.

(d) A student must correctly answer at least 70% of the questions asked on the Commission Standard Competence Test administered to him to be eligible to receive a seller server certificate.

(e) A student who does not correctly answer 70% of the questions asked on the Commission Standard Competence Test administered to him may be immediately retested once. If the student does not correctly answer 70% of the questions asked on the retest, the student must repeat the course in full.

(f) A student must have adequate access to a help desk to resolve technical issues without delaying the flow of instruction.

(g) Questions by a student about the content of the course of instruction must be answered by the holder of a seller server trainer certificate.

(h) An internet-based school may not allow any advertisements to appear during the course of instruction. Advertisements that appear on the website when the course of instruction is not being presented must follow established marketing practices.

§50.8 Management of In-House Course of Instruction.

An in-house seller server school shall comply with the provisions of §50.6 or §50.7, as appropriate to the method of instruction used. An in-house seller server school shall not offer a course of instruction, and shall not issue a seller server certificate, to anyone who is not an employee.

SUBCHAPTER C. SELLER SERVER SCHOOL CERTIFICATES AND REQUIREMENTS

§50.9 Issuance and Control by Schools of Seller Server Certificates.

(a) Order and payment requirements for schools.

(1) All seller server certificate numbers must be ordered and paid for in advance using the order forms and payment methods approved by the commission.

(A) Certificate numbers cost \$2.00 each.

(B) Certificate numbers must be purchased in minimal lots of 60.

(C) The commission will provide each certified school with a certificate template that the school can use to print the seller server certificates it issues to students. A school may also hire a commission-approved vendor to print the seller server certificates.

(2) As a condition for ordering additional certificate numbers, a school must:

(A) have sessions currently scheduled;

(B) submit the session schedules to the commission; and

(C) account for all previously issued certificate numbers.

(3) A certificate order for a session scheduled to occur within five business days from the date of the order must be submitted using expedited mail or delivery service provider. If the certificate numbers cannot be received electronically by the school, the order must also include a preprinted and prepaid return delivery package or label. The certificate numbers will be delivered electronically to the school through the valid e-mail address provided on the school's application, or using the preprinted and prepaid delivery package or label provided with the order.

(4) No session may be conducted unless the school:

(A) has sufficient certificate numbers available to issue a certificate to each individual attending the session at the time, date and location of the scheduled session;

(B) can print and issue a certificate to each individual attending the session at the time, date, and location where the session is conducted; and

(C) limits the number of individuals attending a session to the number of certificate numbers available at the location on the date and time the session is conducted.

(5) If a school had sufficient certificate numbers to issue to each student in a session, but one or more certificate numbers had to be voided so that a student who should have received a certificate did not receive one on the date of the session, the school must, within five calendar days of the session, submit a written statement to the commission explaining why sufficient certificate numbers were not available and listing the voided certificate numbers.

(b) Requirements for classroom-based or in-house schools issuing seller server certificate to students.

(1) If a student satisfies the requirements for a certificate, the school must issue the student the certificate on the date the student satisfied those requirements and at the location of that session.

(2) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, at the conclusion of the session where the student satisfied the requirements for a certificate, and on the date and location of that session, must:

(A) provide the student with a written receipt showing the name of the school, the name of the instructor, the instructor's certificate number, the amounts paid by the student, and the date, time and location of the session;

(B) provide the student written notice containing the commission's internet address and informing the student that he may file a complaint with the commission;

(C) notify the commission in writing, or on forms provided by the commission for internet notification, of the information required to be provided to the student in subparagraph (A) of this paragraph; and

(D) issue the student a certificate within 10 calendar days from the date of the session where the student satisfied the requirements for a certificate.

(c) Requirements for internet-based schools issuing seller server certificate to students.

(1) If a student satisfies the requirements for a certificate, the school must electronically issue the student the certificate within 24 hours of the time the student satisfied those requirements.

(2) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, within 24 hours of the conclusion of the session where the student satisfied the requirements for a certificate, must electronically provide the student:

(A) a receipt showing the name of the school, the name of the instructor, the instructor's certificate number, the amounts paid by the student, and the date and time of the session;

(B) an explanation of why the certificate is not being issued; and

(C) the commission's internet address and notice that he may file a complaint with the commission.

(3) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school, within 24 hours of the conclusion of the session where the student satisfied the requirements for a certificate, must electronically provide the commission the information provided to the student under paragraph (2) of this subsection.

(4) If a school fails to comply with the requirements of paragraph (1) of this subsection, the school must issue the student a certificate within 10 calendar days from the date of the session where the student satisfied the requirements for a certificate.

(d) A school that fails to comply with the requirements of subsection (b) or (c) of this section commits a separate violation for each student affected by that failure.

(e) The commission may refuse to issue certificates to a school:

(1) if the commission has a reasonable basis to believe the certificates have been misused or abused or that inadequate security or control may result in the misuse or abuse of certificates;

(2) if the school fails to provide information and records within three business days of a request by the commission; or

(3) if the school has failed to create or maintain information and records required by the commission.

(f) A school may not transfer a certificate to another school, even if the schools are affiliated branch or primary schools.

§50.10 Requirements for Records, Reports and Notices.

(a) A school must electronically notify the commission at least three business days in advance of each scheduled session. The notice must include the date, time and location of the session and whether the session will have continuous instruction or be presented as units. The commission may waive the three-day requirement on request for good cause shown on an individual basis, but in no case may a session be taught without prior notification to the commission.

(b) Reports of cancelled classes.

(1) A school must electronically notify the commission of the cancellation of a session prior to the scheduled date of the session unless the cancellation cannot reasonably have been anticipated before that date.

(2) When a cancellation cannot reasonably have been anticipated prior to the scheduled date of the session, the school must electronically notify the commission of the cancellation not later than the next business day. The notice must provide an explanation of the circumstances justifying the late notice.

(c) A school shall maintain the Commission Standard Competence Test in a secure manner and in a secure location at all times. A school must electronically notify the commission of any breach of security involving the test within 24 hours of discovering the breach.

(d) Access to commission's portal to file reports and notices.

(1) Each certified school is provided with information and security access to the commission's secure portal when an original certificate or renewal is issued. Access to the secure portal may be terminated without notice if a security breach or malicious virus is detected.

(2) The commission may require or perform periodic audits to ensure secure portals are used for authorized purposes.

(3) A breach of security or misuse of the secure portal will result in immediate termination of access pending investigation.

(e) Reports of seller training.

(1) For each session taught, a school shall electronically file a report of seller training not later than 14 calendar days after the date the class was held.

(2) Each report of seller training shall include all students who successfully

completed the session and received a passing grade on the commission standard competence course.

(3) Each report of seller training shall contain each student's name, commission-approved personal identification number, date of birth, test score and certificate number.

(4) The report of seller training must be personally signed by the certified trainer who actually taught the session.

(5) The trainer shall personally verify that on the date indicated each student included in the report satisfactorily completed the session and received a passing grade on the Commission Standard Competence Test.

(f) Required records.

(1) Each school must maintain, at the school's primary site or at a designated branch site, the reports and notices required in this section.

(2) For each student attending a session, the school must maintain the information required by this paragraph.

(A) The student's first and last names and middle initial.

(B) The student's mailing address.

(C) The student's e-mail address, if available.

(D) Any information required to assign the student a commission-approved personal identification number.

(E) The student's score on the Commission Standard Competence Test.

(3) All records, reports and documents required in this section shall be maintained for four years.

(4) Records, reports and documents required by this section may be maintained electronically in a methodical and organized manner.

(5) All records, reports and documents shall be made available to the commission upon request. Failure to provide the material within five business days of the request is cause for cancellation or suspension of the school's certificate.

(6) Failure to submit any record, report or notice to the commission as and when required is cause for cancellation or suspension of the school's certificate.

(7) Significant and/or repeated errors in submitting information to the commission are cause for cancellation or suspension of the school's certificate.

(8) If a school ceases operation, all records and reports shall be provided to the commission.

(9) The commission may monitor sessions unannounced.

(10) The commission may conduct audits unannounced.

(11) An internet-based school must maintain all contracts it has to receive traffic that has been redirected from another domain.

(g) The administrator may develop standard practices relating to the implementation of this chapter. The standard practices will provide guidance to schools and individuals affected by this chapter regarding technical details required to efficiently and effectively implement this chapter. The standard practices will be provided to certified schools and will be posted on the commission's website. The standard practices may not conflict with or alter the provisions of this chapter.

§50.11 Grounds for Refusing to Process Application.

(a) The commission may refuse to process an original or renewal application for a school certificate under this chapter, if the applicant or any individual who must submit a personal history sheet with the application:

- (1) does not meet the minimum qualifications;
- (2) fails to submit a complete application;
- (3) fails to pay the required fees;
- (4) falsifies, misrepresents, or fails to provide or verify a material fact, disclosure or document required by the commission on the application;
- (5) fails to provide or produce information requested by the commission, and the time for providing the information has passed; or
- (6) had a final disposition of a felony conviction within five years of the date of application.

(b) The commission may refuse to process an original or renewal application for a seller server trainer certificate under this chapter without a hearing, if the applicant:

- (1) does not meet the minimum qualifications;
- (2) fails to submit a complete application;
- (3) fails to pay the required fees;
- (4) falsifies, misrepresents, or fails to provide or verify a material fact, disclosure or document required by the commission on the application;
- (5) fails to provide or produce information requested by the commission, and the time for providing the information has passed; or
- (6) had a final disposition of a felony conviction within five years of the date of application.

§50.12 Suspension or Cancellation of School's Certificate.

(a) The commission may suspend or cancel a school's certificate, if the commission finds after notice and opportunity for a hearing that a school or a trainer employed by the school has violated a provision of this chapter.

(b) In deciding whether to suspend or cancel a school's certificate, the commission may consider:

- (1) the seriousness of the violation;
 - (2) the school's history of violations;
 - (3) the effect of the violation on a student or others;
 - (4) the school's attempt to rectify the violation;
 - (5) whether the school has implemented any changes to prevent similar violations;
- and
- (6) other factors pertinent to the situation.

(c) Before suspending or cancelling a school's certificate, the commission may allow a school an opportunity to correct an alleged violation. The commission may require the school to submit a corrective action plan analyzing how and why the alleged violation occurred, proposing actions designed to prevent similar violations, and describing how restitution will be provided to students or others affected by the violation. If the commission accepts the corrective action plan, the commission may require periodic reports on the plan's implementation and may monitor and/or audit the school to assess compliance with the plan.

§50.13 Grounds for Suspension or Cancellation of School's Certificate.

(a) The commission, after notice and hearing, may suspend or cancel a school's certificate if the school, or a trainer employed by or under contract to the school:

- (1) fails to verify an individual's qualifications to receive a certificate;
- (2) signs a certificate when the trainer did not personally instruct the student;
- (3) fails to follow or provide instruction required by the mandatory curriculum;
- (4) provides fewer than the required number of hours of instruction;
- (5) issues more than 50 seller server certificates for a single session, unless the school has an internet-based seller server school certificate;
- (6) issues a seller server certificate or provides instruction on a date when the school's or instructor's certification is expired, suspended or cancelled;
- (7) fails to administer or require a student to take and/or make a passing score on the Commission Standard Competence Test before issuing a seller server certificate to the student;
- (8) uses, discloses, or sells personal or financial information obtained from a student or the commission for a purpose or in a manner not authorized by this chapter;
- (9) falsifies, alters or destroys a record required by the commission, regardless of whether there was intent to deceive the commission or another;
- (10) violates any section of this chapter or the standard practices of the commission that, in the opinion of the commission, warrants suspension or cancellation;
- (11) has engaged in an ongoing course of conduct or activities that undermine the purpose and intent of this chapter;
- (12) fails to control, monitor, and supervise instructors and classroom instruction to prevent a violation of law or the requirements of this chapter;
- (13) fails to implement control and security measures to protect personal or financial information obtained from a student or the commission from accidental, intentional, or malicious use or disclosure;
- (14) allows a session to be taught by someone who does not hold current trainer certification;
- (15) falsifies, makes a material misstatement, or fails to disclose required information on any document or record required by this chapter;
- (16) counterfeits a certificate issued under this chapter; or
- (17) violates any provision of this chapter.

(b) The commission, after notice and hearing, may suspend or cancel a school's certificate if a trainer employed by or under contract to the school, a responsible person assigned by the school to a session, the owner or governing body of a school, or the administration of a college or university has failed to supervise or exercise control of its employees or facilities, and the failure has resulted in actual harm or increased risk to the health or safety of students or the public.

(c) The commission, after notice and hearing, may suspend or cancel a school's certificate if the quality of instruction falls below minimum commission standards as determined by the commission through:

- (1) direct observation of instruction by commission auditors or agents;
- (2) consistent failure of the school to impart basic knowledge and understanding to students, as measured by student failures, student violations, or student surveys or reports; or
- (3) complaints received from any person.

(d) The commission, after notice and hearing, may suspend or cancel a school's certificate if the school engages in any of these acts or practices:

- (1) presenting the course of instruction as its own when it is not;
- (2) causing confusion or misunderstanding as to the source, sponsorship, approval or certification of the course of instruction or services provided by a school or instructor;
- (3) causing confusion or misunderstanding as the affiliation, connection or association with, or certification by, the TABC or a school certified by TABC;
- (4) representing that a school or course of instruction is sponsored, approved, certified or accredited by the commission when it is not;
- (5) representing that an individual is affiliated with, employed by or represents a school certified by the commission when the individual is not;
- (6) representing that a course of instruction has been approved by the commission when it has not; or
- (7) advertising services or other courses of instruction during the time allocated for instruction or completion of a course of instruction approved by the commission.

§50.14 Prohibited Relationships.

(a) No licensee or permittee of the commission, or his spouse, agent, servant, or employee, or any subsidiary or affiliate, may directly or indirectly conduct, sponsor, or support a seller training program approved under this chapter except as provided in the Texas Alcoholic Beverage Code, §106.14(c) and (d).

(b) A licensee or permittee of the commission may be a member of an advisory board, but not the governing board of a nonprofit agency which sponsors a seller training program.

(c) Persons engaged in the manufacturing or wholesaling of alcoholic beverages for national distribution may contribute to the development of a curriculum of seller training being developed for national use; provided, that any such contribution or involvement shall not be directly or indirectly tied to the actual offering of training to employees of any retailer, group of retailers, or the general public. Such involvement by an alcoholic beverage manufacturer shall be in a primarily noncommercial manner consistent with the spirit and intent of the provisions of the Texas Alcoholic Beverage Code and the rules of the commission prohibiting the tied-house and prohibiting the furnishing of things of value to a retailer of alcoholic beverages.

(d) No licensee, permittee, or other person engaged in the manufacturing or wholesaling level of the alcoholic beverage industry, or any agent, servant, or employee of any of those, may directly or indirectly conduct or sponsor a seller training program for retail level employees or members of the general public.

§50.15 Application for Primary Classroom-Based Seller Server School Certificate.

(a) Applicant and Application. An applicant for an original or renewal primary classroom-based seller server school certificate must complete all sections of the application on forms provided by the commission. The applicant must provide a valid e-mail address and must agree to maintain a currently valid e-mail address on file with the commission at all times.

(b) Disclosure of Owners, Officers, Directors, Managers and Instructors.

(1) The applicant for an original certificate or change of ownership for a primary classroom-based seller server school must disclose all individuals and legal entities having an ownership interest, and all officers, directors, managers, and instructors.

(2) A legal entity must provide its formation and registration documents and must be authorized to transact business in this state.

(3) A personal history sheet must be completed and submitted with the application for each individual owner, and each individual shareholder, partner, officer, director, and manager.

(4) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(5) Additional information may be required by the commission to verify ownership or qualifications of the applicant.

(c) The applicant must sign and verify that:

(1) the applicant has authority to act on behalf of all owners;

(2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;

(3) all parts of the application that apply are complete;

(4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;

(5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and

(6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a school's certificate, or criminal prosecution.

(d) Incomplete applications or applications submitted without required fees will not be accepted for processing or returned to the applicant.

(e) An applicant must:

(1) keep an exact copy of the application submitted to the commission; and

(2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

(f) The application for a primary classroom-based seller server school certificate must designate:

(1) a certified trainer responsible for the oversight, operation, training and compliance at the primary seller server school;

(2) an individual responsible for the day-to-day operations and facilities of the primary seller server school;

(3) the principal site of the school; and

(4) all branch classroom-based seller server school certificates the applicant has or for which application is being made.

(g) The holder of a primary classroom-based seller server school certificate must apply for a branch classroom-based seller server school certificate for each site, other than the designated principal site, where records required by this chapter are maintained.

§50.16 Application for Branch Classroom-Based Seller Server School Certificate.

(a) A branch classroom-based seller server school certificate is required for each site, other than a principal site designated pursuant to §50.20(f)(3), where records required by this chapter are maintained.

(b) An applicant for an original or renewal branch classroom-based seller server school certificate must be an applicant for or hold a current primary classroom-based seller server school certificate.

- (c) An application for a branch classroom-based seller server school certificate must indicate the primary classroom-based seller server school certificate with which it is associated.
- (d) An applicant may submit more than one application for a branch seller server school certificate, but each application must be completed and submitted on forms provided by the commission.
- (e) The owners, shareholders, officers and directors of the primary seller server school and the branch seller server school must be the same.
- (f) The application for a branch seller server school certificate must designate:
 - (1) a certified trainer responsible for the oversight, operation, training and compliance at the branch seller server school;
 - (2) the individual responsible for the day-to-day operations and facilities of the branch seller server school; and
 - (3) the applicant for or holder of the associated primary classroom-based seller server school certificate.
- (g) A personal history sheet must be completed and submitted with the application for each certified trainer and responsible individual designated pursuant to subsection
- (f) A copy of a personal history sheet is acceptable if the original was included as part of the primary school application.
- (h) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.
- (i) Additional information may be required by the commission to verify ownership or qualifications of the applicant.
- (j) The applicant must sign and verify that:
 - (1) the applicant has personally completed or reviewed the application and is responsible for its content;
 - (2) all parts of the application are completed; and
 - (3) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted.
- (k) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.
- (l) An applicant must:
 - (1) keep an exact copy of the application submitted to the commission; and
 - (2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

§50.17 Application for Primary Internet-Based Seller Server School Certificate.

- (a) An applicant for an original or renewal primary internet-based seller server school certificate must complete all sections of the application on forms provided by the commission.
- (b) An applicant for an original certificate or change of ownership for an internet-based seller server school must disclose all individual owners, individuals and legal entities having an ownership interest, and all officers, directors, managers, and instructors.
 - (1) A legal entity must provide its formation and registration documents and must be authorized to transact business in this state.
 - (2) A personal history sheet must be completed and submitted with the application for each individual disclosed on the application.
 - (3) An individual required to submit a personal history sheet must at the same time

submit an authorization for a criminal history background check.

(4) Additional information may be required by the commission to verify ownership or qualifications of the applicant.

(c) The applicant must sign and verify that:

- (1) the applicant has authority to act on behalf of all owners;
- (2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;
- (3) all parts of the application that apply are complete;
- (4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;
- (5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and
- (6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a certificate, or criminal prosecution.

(d) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.

(e) An applicant must:

- (1) keep an exact copy of the application submitted to the commission; and
- (2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

(f) An applicant for an internet-based seller server school certificate must verify that the security measures implemented and maintained by the school meet state and federal standards for the transmission and protection of personal identification information and financial information of individuals accessing the website.

(g) The presentation and course progress platform used by an internet-based seller server school must be reviewed and approved by the commission to ensure:

- (1) the course of instruction contains all topics required by the mandatory curriculum; and
- (2) each topic must be completed before the next topic may be accessed.

(h) An applicant for a primary internet-based training school certificate must designate a primary domain and must list:

- (1) all domains the school uses to provide any course of instruction that includes the mandatory curriculum;
- (2) all domains under common ownership with the school that redirect students to the primary designated domain or to any other domain under common ownership with the designated primary domain; and
- (3) all domains, whether or not under common ownership, with which the school has a contractual relationship to redirect students to the designated primary domain or to any domain under common ownership.

(i) The applicant must agree to update the list required by subsection (h) of this section within 24 hours of a change during the term of the certificate and failure to keep the list current is grounds for cancellation of the primary internet-based training school certificate.

(j) A primary internet-based training school must obtain a branch internet-based training school certificate for each domain that is under common ownership with the designated primary domain but that offers a different course of instruction from that offered at the designated

primary domain.

(k) A primary internet-based training school is not required to obtain a branch internet-based training school certificate for a domain that is under common ownership with the designated primary domain but that either merely redirects students to the designated primary domain or to another domain that is under common ownership with the primary domain.

(l) A primary internet-based training school must require that before any domain redirects a student to the designated primary domain or to any domain under common ownership with it, and before charging the student, the redirecting domain must inform the student:

- (1) that he will be transferred to another site;
- (2) of the name of the school that will actually provide the course of instruction;
- (3) of the name of the school that will appear on his certificate upon successful completion of the course;
- (4) that the school to which he will be redirected will solicit private, personally identifiable information from the student; and
- (5) that the student may refuse to be transferred without incurring fees.

§50.18 Application for Branch Internet-Based Training School Certificate.

(a) A branch internet-based training school certificate is required for each domain that offers a different course of instruction from the course of instruction approved for the designated primary domain.

(b) An applicant for an original or renewal branch internet-based training school certificate must be an applicant for or hold a current primary internet-based training school certificate.

(c) An applicant for an original or renewal branch internet-based seller server school certificate must be an applicant for or already hold a current primary internet-based seller server school certificate.

(d) An application for a branch internet-based seller server school certificate must indicate the primary internet-based seller server school certificate with which it is affiliated.

(e) An applicant may submit more than one application for a branch seller server school certificate, but each application must be completed and submitted on forms provided by the commission.

(f) A personal history sheet must be completed and submitted with the application for each certified instructor. A copy is acceptable if the original was included as part of the primary school application.

(g) An authorization for a criminal history background check is required for each individual required to submit a personal history sheet and who has not previously submitted the authorization.

(h) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(i) The applicant must sign and verify that:

- (1) the applicant has personally completed or reviewed the application and is responsible for its content;
- (2) all parts of the application are completed; and
- (3) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted.

(j) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.

- (k) An applicant must:
 - (1) keep an exact copy of the application submitted to the commission; and
 - (2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

§50.19 Application for Primary In-House Seller Server School Certificate.

(a) Application. An application for an original or renewal primary in-house seller server school certificate must be completed and submitted on forms provided by the commission.

(b) An applicant for a primary in-house seller server school certificate must satisfy the requirements of paragraph (1) or (2) of this subsection.

(1) Be the current holder of a retail permit or license issued by the commission and employ a minimum of 150 individuals. The duties of the permit or license holder's employees must include the preparation, sale, service, or delivery of alcoholic beverages to ultimate consumers.

(2) Be a hotel management or holding company that owns or operates a minimum of five hotels which employ a minimum of 200 individuals whose duties include preparation, sale, service, or delivery of alcoholic beverages to ultimate consumers. The primary in-house seller server school must be managed and controlled by the hotel management or holding company and not the owned or managed hotels.

(c) Disclosure of Owners, Officers, Directors, Managers and Instructors.

(1) An applicant whose owners, officers, directors and managers are an exact match to those previously provided to the commission in connection with a license or permit currently held by the applicant is exempt from the requirements of paragraphs (2), (3) and (4) of this subsection. However, the applicant must identify the license or permit application where the information requested in those paragraphs can be found.

(2) The applicant for an original certificate or change of ownership for an in-house seller server school must disclose all individual owners, individuals and legal entities having an ownership interest, and all officers, directors, managers, and instructors.

(3) A legal entity must provide the formation and registration documents and must be authorized to transact business in this state.

(4) A personal history sheet must be completed and submitted with the application for each individual who is an owner or holds an ownership interest in a legal entity, and each partner, officer, director, manager, and trainer if:

(A) the applicant has not previously provided a personal history sheet for the individual; or

(B) the information previously provided is no longer true and correct.

(5) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.

(6) Additional information may be required by the commission to verify ownership or qualifications of an applicant or individual.

(d) An applicant for a primary in-house seller server school must designate:

(1) a certified trainer responsible for the oversight, operation, training and compliance at the seller server school; and

(2) an individual responsible for the day-to-day management and operations at the seller server school.

(e) The applicant must sign and verify that:

- (1) the applicant has authority to act on behalf of all owners;
 - (2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;
 - (3) all parts of the application that apply are complete;
 - (4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;
 - (5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and
 - (6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a certificate, or criminal prosecution.
- (f) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.
- (g) An applicant must:
- (1) keep an exact copy of the application submitted to the commission; and
 - (2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

§50.20 Application for Branch In-House Seller Server School Certificate.

- (a) An applicant for an original in-house branch seller server school certificate must be an applicant for or currently hold a primary in-house seller server school certificate.
- (b) An applicant for a branch in-house seller server school certificate renewal or change of ownership must hold a current primary in-house seller server school certificate.
- (c) An applicant may submit one or more applications for a branch in-house seller server school certificate, but each application must be separately completed and submitted on forms provided by the commission.
- (d) The owners, shareholders, officers and directors of the primary in-house seller server school and the branch in-house seller server school must be the same.
- (e) The application for a branch in-house seller server school certificate must designate:
 - (1) a certified trainer responsible for the oversight, operation, training and compliance at the branch seller server school; and
 - (2) an individual responsible for the day-to-day operations and management of the branch in-house seller server school.
- (f) A personal history sheet must be completed and submitted with the application for each trainer and responsible individual, if the individual has not previously provided a personal history sheet with the original or renewal application for the primary in-house seller server school.
- (g) An individual required to submit a personal history sheet must at the same time submit an authorization for a criminal history background check.
- (h) Additional information may be required by the commission to verify ownership or qualifications of an applicant or individual.
- (i) The applicant must sign and verify that:
 - (1) the applicant has authority to act on behalf of all owners;
 - (2) the applicant has personally completed or reviewed the application and has personal knowledge of and is responsible for its content;
 - (3) all parts of the application that apply are complete;

(4) each fact, disclosure, and statement made in the application is true and correct at the time the application is submitted;

(5) the applicant acknowledges that an application for a certificate is a government document and is subject to verification by the commission; and

(6) the applicant acknowledges that providing false or misleading information or omitting a material fact may result in the refusal of the application, cancellation of a certificate, or criminal prosecution.

(j) Incomplete applications or applications submitted without required fees will neither be accepted for processing nor returned to the applicant.

(k) An applicant must:

(1) keep an exact copy of the application submitted to the commission; and

(2) complete and correct any deficiencies within ten business days after being notified of the deficiency.

§50.21 Renewal Application.

(a) An application for renewal of a certificate issued under this subchapter must be submitted on forms provided by the commission. The applicant must verify that the individual owner, or a designated representative of the owning legal entity, has attended any mandatory training offered or sponsored by the commission, and has completed the commission's liquor law class, during the term of the expiring certificate.

(b) Any information that has changed since the original or last renewal application was submitted must be completed and corrected on forms provided for an original application.

(c) A renewal application must be submitted before the date the certificate expires.

(d) Notwithstanding (c) of this section, the commission may accept a renewal application and the certificate holder may continue to operate for 30 days following the expiration date, if:

(1) neither the primary nor any associated branch school is currently under a suspension order; and

(2) the required fees and late fee are submitted with the renewal application.

(e) A certificate holder who fails to submit a renewal as required by this section or pay the required fees must apply for an original application.

(f) A certificate issued under this subchapter may not be renewed if the school has not held at least 20 sessions during the term of the expiring certificate.

§50.22 Expiration and Fees.

(a) Primary seller server school certificate.

(1) A primary certificate will expire on the second anniversary of the date it is issued.

(2) The two-year fee for an original primary certificate is \$1000.

(3) The two-year fee for a renewal primary certificate is \$500.

(4) A late fee of \$100 must be submitted with a renewal submitted after the date the certificate expired.

(5) No fees will be refunded after a certificate is issued.

(6) Fees cannot be prorated for a term of less than two years.

(b) Branch seller server school certificate.

(1) A branch certificate will expire on the date the primary certificate expires.

(2) The two-year fee for each original classroom based or in-house branch certificate

is \$200, and for each internet-based branch certificate is \$50.

(3) The two-year fee for each renewal classroom based or in-house branch certificate is \$100, and for each internet-based branch certificate is \$25.

(4) Fees for branch certificates that will expire in less than two years as a result of the primary certificate's expiration are not prorated.

(c) No certificate will be issued until all fees and late fees are paid. A fee is paid on the date funds are available and transferred from the applicant's account.

(d) The filing fee for a change of ownership is \$100.

§50.23 Change of Ownership or Location.

(a) A change of ownership is any agreement to transfer ownership or control of a school. A change of control is presumed if:

(1) more than 50% of an individual owner's interest is sold or transferred;

(2) more than 50% of a legal entity's interest is sold or transferred; or

(3) there is a change in directors, officers, shareholders, or other governing body that results in significant changes in operations, management or key instructors.

(b) A certificate issued under this subchapter may not be sold or transferred to an individual or legal entity not currently listed on the application.

(c) Individuals and legal entities currently listed on a certificate application may purchase, sell, or transfer ownership or an interest in the certificate, but only to another listed owner.

(d) A sale or transfer of an ownership interest in a school that does not result in a change of control under subsection (a) of this section does not require an original application. The sale or transfer is effective upon submission of :

(1) a change of ownership form;

(2) documents providing evidence of the sale or transfer; and

(3) payment of the required fee.

(e) A sale or transfer that results in a change of ownership in a primary seller server school as described in subsection (a) requires submission of an original application.

(f) The sale or transfer of an ownership interest in a branch school certificate to an individual or legal entity not currently the primary school permit holder requires the purchaser to submit an original application for a primary school certificate.

§50.24 Notice of Change of Location

The holder of a certificate issued under this subchapter must comply with §33.33 of this title.

SUBCHAPTER D. SELLER SERVER TRAINER CERTIFICATE

§50.25 Seller Server Trainer Certificate.

(a) Applicant Minimum Qualifications. An applicant for an original or renewal seller server trainer certificate must:

(1) submit documentation issued by an agency of the United States, this or another state of the United States that proves the applicant is a United States citizen or is legally authorized to work in the United States at the time of application;

(2) not be disqualified to receive a seller server school certificate under §50.12 of this chapter;

(3) be at least 21 years of age;

(4) submit a completed application on a commission approved form;

(5) pay the fee required for a seller server trainer certificate; and

(6) not have had a final disposition of a felony conviction within five years of the date of application.

(b) An applicant for an original seller server trainer certificate must submit with the application:

(1) a certificate of completion issued by the provider of the commission standard trainer training and signed by the instructor of the training; and

(2) documentation establishing that the applicant has at least:

(A) 2 years experience in teaching or training; or

(B) 15 hours of post secondary education in a related field.

(c) Expiration and Fees.

(1) An seller server trainer certificate will expire on the second anniversary of the date it is issued.

(2) The two-year fee for an original seller server trainer certificate is \$100, and for a renewal is \$50.

(3) A late fee of \$50 must be submitted with a renewal application submitted after the date the certificate expired.

(4) No fees will be refunded after a certificate is issued.

(5) Fees cannot be prorated for a term of less than two years.

(d) The holder of a seller server trainer certificate may renew the certificate if:

(1) a renewal application is submitted, on forms provided by the commission, prior to the expiration of the current certificate;

(2) the required two-year fee is submitted with the application;

(3) the applicant verifies that he attended all mandatory training offered or sponsored by the commission and completed the commission's liquor law course during the two-year term of the expiring certificate; and

(4) the applicant has instructed at least 20 sessions during the term of the expiring certificate.

(e) Notwithstanding (d)(1) of this section, the commission may accept a renewal application and the seller server trainer certificate holder may continue to operate for 30 days following the expiration date of his certificate, if:

(1) the holder of the seller server trainer certificate is not currently under a suspension order; and

(2) the required fees and late fees are submitted with the renewal application.

§50.26 Trainer Standards and Requirements.

(a) The holder of a seller server trainer certificate is qualified to:

(1) apply for a seller server school certificate issued under this chapter; and

(2) be employed by a certified seller server school to teach the mandatory curriculum to individuals seeking a seller server certificate.

(b) The holder of a seller server trainer certificate must:

- (1) ensure that no more than 50 students attend a session of a classroom-based course of instruction, unless the course is being offered by an internet-based school;
- (2) require each student to sign a roster of class attendance before instruction begins;
- (3) ensure that each student attends each segment of training;
- (4) instruct on all required topics;
- (5) administer, monitor, and grade the Commission Standard Competence Test;
- (6) document the test results;
- (7) complete, sign, and issue seller server certificates to students who pass the test, on the date and location of the session; and
- (8) ensure that all students who successfully complete the session and pass the Commission Standard Competence Test are reported to the commission as required by this chapter:
 - (A) by timely delivering all information, documents, and test results to the seller server school for entry in the commission's database; or
 - (B) by entering the information in the commission's database.
- (9) conduct himself in an ethical, professional, and lawful manner;
- (10) provide students with the rules of conduct and requirements of the course, and the consequences of breaking rules or failing to meet the requirements;
- (11) remain in the classroom at all times except during breaks;
- (12) provide instruction on all topics and subjects included in the mandatory curriculum and maintain a pace that will ensure a high quality of instruction and comprehension by students;
- (13) make reasonable use of visual aids and demonstrations but not allow these tools to be a substitute for trainer participation;
- (14) avoid the use of language or conduct that would be offensive to a reasonable person;
- (15) verify all students' qualifications to receive a certificate, unless the course is being offered by an internet-based school;
- (16) provide the required number of minutes of instruction;
- (17) issue no more than 50 seller server certificates for a single session;
- (18) not issue a seller server certificate or provide instruction on a date when the school's or instructor's certification is expired, suspended or cancelled;
- (19) require a student to correctly answer 70% of the questions asked on the Commission Standard Competence Test before issuing a seller server certificate to the student;
- (20) not use, disclose, or sell personal or financial information obtained from a student or the commission for a purpose or in a manner not authorized by this chapter;
- (21) not falsify, alter or destroy a record required by the commission, regardless of whether there was intent to deceive the commission or another;
- (22) not violate any section of this chapter or the standard practices of the commission that, in the opinion of the commission, warrant suspension or cancellation;
- (23) not engage in an ongoing course of conduct or activities that undermine the purpose and intent of this chapter;
- (24) implement control and security measures to protect personal or financial information obtained from a student or the commission from accidental, intentional, or malicious use or disclosure; or
- (25) not counterfeit a certificate issued under this chapter.

(c) The commission, after notice and hearing, may suspend or cancel a seller server trainer certificate if the quality of instruction falls below minimum commission standards as determined by the commission through:

- (1) direct observation of instruction by commission auditors or agents;
- (2) consistent failure of the trainer to impart basic knowledge and understanding to students, as measured by student failures, student violations, or student surveys or reports; or
- (3) complaints received from any person.

§50.27 Suspension or Cancellation of Seller Server Trainer Certificate.

The commission, after notice and hearing, may suspend or cancel a seller server trainer certificate if the trainer fails to satisfy a requirement of §50.31 of this chapter or violates any provision of this chapter.

SUBCHAPTER E. SELLER SERVER CERTIFICATES

§50.28 Verification and Expiration of Certificate.

- (a) The commission can only issue an affidavit verifying that a seller server certificate has been issued to a student if:
 - (1) the request for verification includes the students name, date of birth, and a commission-approved personal identification number; or
 - (2) the request for verification includes the students name, date of birth, and the certificate number of the certificate that is the subject of the verification request, if a commission-approved personal identification number is not available.
- (b) A certificate issued under this chapter will expire on the second anniversary of the date it is issued.

Note: Amended Rule Adopted: November 19, 2013; Effective Date: December 12, 2013

§50.29 Seller Server Certificate Requirements.

- (a) To receive a seller server certificate from a seller server school certified under this chapter, a student must:
 - (1) complete either a 120-minute classroom-based course of instruction or an internet-based, self-paced course of instruction;
 - (2) complete all required topics of the commission standard competence curriculum; and
 - (3) pass the Commission Standard Competence Test.
- (b) It is the student's responsibility to verify whether a school or trainer is certified. The certification status of the school or may be verified at the commission's website.
- (c) The commission will not refund any fees paid to a seller server school or instructor.

§50.30 Void and Voidable Seller Server Certificates.

- (a) A seller server certificate is void if:
 - (1) the certificate is a forgery or false document; or

- (2) the certificate has been altered.
- (b) A seller server certificate is voidable if:
 - (1) the school records were entered in error, or the certificate was issued in error and the name on the face of the numbered certificate and the commission records for the numbered certificate do not match;
 - (2) the issuing school did not have a current school certificate;
 - (3) the school's certificate was suspended at the time the certificate was issued;
 - (4) the school did not require the individual to participate in a course of instruction that included the commission standard competence curriculum before the certificate was issued; or
 - (5) the school did not require the individual to take and pass the Commission Standard Competence Test.
- (c) If a seller server certificate is voidable under subsection (b), the school shall:
 - (1) resolve the error;
 - (2) provide remediation for the affected certificate holders; and
 - (3) report corrected information to the commission within ten business days.
- (d) A school must give notice to each individual holding a void or voidable certificate under this section.
- (e) If a school ceases to exist, all unused certificates held by the school are voided. No refund will be made for certificates voided under this subsection.

§50.31 Revocation.

- (a) The commission may revoke a seller server certificate under the conditions set forth in this section.
 - (1) If the holder of a seller server certificate sells or serves an alcoholic beverage to a minor or intoxicated person, the certificate holder must be recertified within 30 days of the violation. Recertification requires completing a course of instruction offered by a certified school and passing the Commission Standard Competence Test. If the certificate holder is not recertified within 30 days of the violation, the commission may revoke the certificate.
 - (2) If the holder of a seller server certificate sells or serves an alcoholic beverage to a minor or intoxicated person a second time within a 12 month period, the commission may revoke the certificate. The certificate holder cannot be recertified for a period of 90 days. Recertification requires completing a course of instruction offered by a certified school and passing the Commission Standard Competence Test.
 - (3) If the holder of a seller server certificate sells or serves an alcoholic beverage to a minor or intoxicated person a third time within a 12 month period, the commission may revoke the certificate. The certificate holder cannot be recertified for a period of one year. Recertification requires completing a course of instruction offered by a certified school and passing the Commission Standard Competence Test.
 - (4) If the holder of a seller server certificate provided false identification to a seller server school or trainer, including, but not limited to, name, social security number, or birth date, the commission may revoke the certificate. The certificate holder cannot be recertified.
 - (5) If the holder of a seller server certificate did not successfully complete a course of instruction offered by a certified school or did not pass the Commission Standard Competence Test, the commission may revoke the certificate.

(b) Before the commission may revoke a seller server certificate, the commission must give notice to the holder of the certificate that he has the right to request a hearing, but that he must make such request within 21 days after the receipt of the notice of violation.

Note: New Chapter Adopted: July 27, 2010; Effective Date: January 1, 2011

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